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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 26

THE UNITED STATES, PETITIONER

vs.

ALTEA BAND OF TILLAMOOKS, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 24, 1945.
CERTIORARI GRANTED OCTOBER 29, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 387

THE UNITED STATES, PETITIONER

vs.

ALCEA BAND OF TILLAMOOKS ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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865379—45——1

In the Court of Claims of the United States

No. 45230

ALCEA BAND OF TILLAMOOKS; YAH-QUO-NAH BAND OF TILLAMOOKS; SELETCA BAND OF TILLAMOOKS; NE-A-CHESNA BAND OF Tillamooks; Ump-Qua Tribe; Quans-Sake-Nah, Klen-Nah-Hah, and Ke-Ah-Mas-E-Ton Bands of Nas-O-Mah or Coquille Tribe; Ko-Se-E-Chah Band of Too-Too-To-Neys, Se-Qua-Chee Band of Too-Too-To-Neys; Too-Too-To-Ny Band of Too-Too-To-Neys; Chet-Co Tribe; Yah-Shute Band of Too-Too-To-Neys; Whis-To-Natin Band of Too-Too-To-Neys; Cos-Sa-To-Ny Band of Too-Too-To-Neys; Chet-Less-Ing-Ton Band of Too-Too-To-Neys; Port Orford Band of Too-Too-To-Neys; Eukie-Chee Band of Too-Too-To-Neys; Kus-So-To-Ny Band of Too-Too-To-Neys; Kler-It-La-Tel Band of Too-Too-To-Neys; Te-Cha-Quot Band of Too-Too-To-Neys; Mack-A-No-Tin Band of Too-Too-To-Neys; Cah-Toch, Chin-Chen-Ten-Tah-Ta, Whiston, and Klen-Hos-Tun Bands of Coquilles; Chinook Tribe; Clatsop Tribe; Ne-Ha-Lum Tribe; Confederated Tribes of the Grand Ronde Community, Oregon; Willamette Valley Confederated Tribes of Indians; Siletz Confederated Tribes of Indians; and Portions and Descendants of All Such Tribes and Bands.

v.

THE UNITED STATES

History of proceedings

The original petition was filed August 6, 1940.

An amended petition was filed on August 23, 1940.

On March 20, 1943, on motion made therefor, and allowed by the court, the plaintiff filed its second amended petition, which is as follows:

Second amended petition

Filed March 20, 1943

In compliance with the rules of this Honorable Court and in keeping with the allegations of its original petition as first
2 amended with respect to subsequent amendment giving more particularity, Plaintiffs by way of amended petition state:

I

Plaintiffs bring this suit against the defendant, the United States, under the authority of the Act of Congress approved

August 26, 1935 (49 Stat. 801), entitled "An Act Conferring Jurisdiction Upon the Court of Claims to Hear and Determine Claims of Certain Bands or Tribes of Indians Residing In the State of Oregon" which said Act is in words and figures as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred on the Court of Claims with the right of appeal to the Supreme Court of the United States by either party, as in other cases, to hear, examine, adjudicate, and render final judgment (a) in any and all legal and equitable claims, arising under or growing out of any treaty, agreement, Act of Congress, or Executive order, or for the failure of the United States to pay any money or other property due, which those Indian tribes or bands, or portions thereof, and their descendants, described in the ratified treaties of September 10, 1853 (10 Stat. 1018), September 19, 1853 (10 Stat. 1027), November 18, 1854 (10 Stat. 1122), November 25, 1854 (10 Stat. 1125), January 22, 1855 (10 Stat. 1143), and December 21, 1855 (12 Stat. 981), may have against the United States; and (b) any and all legal and equitable claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon the whole or any part of the lands and their appurtenances occupied by the Indian tribes and bands described in the unratified treaties published in Senate Executive Document Numbered 25, Fifty-third Congress, first session (pp. 8 to 15), at and long prior to the dates thereof, except

3 the Coos Bay, Lower Umpqua, and Siuslaw Tribes, it being the intention of this Act to include all the Indian tribes or bands and their descendants, with the exceptions named, residing in the then Territory of Oregon west of the Cascade Range at and long prior to the dates of the said unratified treaties, some of whom, in 1855, or later, were removed by the military authorities of the United States to the Coast Range, the Grande Ronde, and the Siletz Reservations in said Territory.

"SEC. 2. That if any claim or claims be submitted to said courts hereunder they shall settle the rights therein, both legal and equitable, of each and all the parties thereto, notwithstanding the lapse of time or the statutes of limitation; and any payment which may have been made under any claim or agreement shall not operate as an estoppel but may be pleaded as a setoff, and the United States shall be allowed to plead, and shall receive credit for all sums, including gratuities, paid to or expended for the benefit of the respective tribes or bands of Indians, but no expenditures for the benefit of these Indians made out of appropriations authorized by the Act of June 18, 1934 (48 Stat. L. 984) shall be considered as

offsets. The claim or claims of each tribe or band may be presented separately or jointly by petition, subject, however, to amendment and consolidation in proper cases. Such action or actions shall make the petitioner or petitioners party plaintiff or plaintiffs and the United States party defendant; and any nation, tribe, or band the court may deem necessary to a final determination of such suit or suits may be joined therein by order of the court.

"The petition shall set forth all the facts upon which the claims are based and shall be signed and verified by the attorney or attorneys employed to prosecute such claim or claims and who are under contract with said Indians approved in accordance with existing law. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act.

4 "Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence, and the departments of the Government shall allow the attorney or attorneys access to such treaties, papers, correspondence, or records as may be needed by said attorney or attorneys.

"SEC. 3. That upon the final determination of such suit, or suits, the Court of Claims shall decree such fees not exceeding 10 per centum of the amounts recovered as it shall find reasonable to be paid the attorney or attorneys employed therein by said Indians or bands of Indians, under contracts negotiated and approved as provided by existing law, together with all necessary and proper expenditures incurred in the preparation and prosecution of the suit or suits.

"SEC. 4. The proceeds of all amounts, if any, recovered for said Indians, less attorneys' fees and expenses, shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 4 per centum per annum from the date of the original judgment or decree and thereafter shall be subject to appropriation by Congress."

II

The plaintiffs entered into a contract on March 20, 1937 with Daniel B. Henderson and John G. Mullen, attorneys of this Court. After the contract of employment was entered into said Daniel B. Henderson became seriously ill and was unable to represent said plaintiffs and an assignment of part of the contract of attorneyship was duly made to Sanders, Gravelle, Whitlock & Howrey, attorneys of this Court by John G. Mullen on May 23, 1940. Under said contract and assignment said attorneys are duly authorized to represent the plaintiffs and to file and prosecute this suit in their

behalf. Said original contract of March 20, 1937 was duly executed in behalf of the aforesaid tribes or bands of Indians by a committee chosen by them under the direction and approval of the Commissioner of Indian Affairs and the Secretary of the Interior and the original contract of March 20, 1937 has been duly approved by the Commissioner of Indian Affairs and the Assistant Secretary of the Interior. The assignment of a part of the contract of May 23, 1940 has been duly approved by the Assistant Commissioner of Indian Affairs and the Assistant Secretary of the Interior.

That as to the Indians not covered by such assigned contract the Attorneys signing this petition are and were duly employed to prosecute such claims and are under contract with said Indians approved in accordance with existing law.

III

From time immemorial plaintiffs occupied, held and used the lands described in the unratified treaties mentioned in said Act and certain other tracts being a part of the territory from the Columbia River on the north, south to the State of California, west to the Pacific Ocean, east to the summit of the Coast Range of mountains and certain other lands west of the Cascade Range of mountains and north of the State of California except that portion thereof occupied by the Coos Bay, Lower Umpqua and Siuslaw Tribes of Indians. Such tribal possessions were marked by well defined natural boundaries and recognized by all other tribes or bands of Indians.

That the tract of land herein described was not all held jointly by the plaintiffs herein but were occupied, held and used in some instances by an individual tribe and in other instances with joint bands or joint tribes and the judgment hereafter prayed should be several or joint as required to meet the ends of justice.

That the exact amount of credits and offsets are unknown to plaintiffs but the plaintiffs are justly entitled to recover the amounts hereinafter claimed after allowing just credits and offsets.

IV

The President under the authority of the Act of Congress of June 5, 1850, appointed several Commissioners to negotiate treaties with the Indian Tribes or bands in the territory of Oregon for the extinguishment of their title to lands lying west of the Cascade Range of Mountains.

That after the appointment of commissioners to carry out the provisions of the Act of Congress of June 5, 1850, the plan was changed by Act of Congress approved February 27, 1851, and Joel Palmer, Superintendent of Indian Affairs in Oregon, was authorized to and did negotiate many treaties including the unratified treaties described in said Jurisdictional Act.

Thereafter under dates of September 10, 1853, September 19, 1853, November 18, 1854, November 29, 1854, January 22, 1855, and December 21, 1855, Joel Palmer, Superintendent of Indian Affairs in Oregon, negotiated treaties for the cession of their lands with the various Indian tribes and bands occupying all that portion of Oregon lying between the Columbia River on the north, the Cascade Mountains on the east, the Oregon-California line on the south, and, in the main, the Coast Range of Mountains on the west, and the same were duly ratified and confirmed by the Congress of the United States.

That at the time of the execution of said unratified treaty the Plaintiff Indians described therein had occupied, held and used from time immemorial the lands described therein and the lands hereinafter more particularly described and had immemorially held Indian title, claim, and rights to said lands and appurtenances.

7

V

That the bands of Tillamooks, the bands of Coquilles and the bands of Too-too-to-neys including the Chetco tribe, all plaintiffs herein, are for convenience referred to hereinafter as Tillamooks, Coquilles and Too-too-to-neys respectively. That the lands so occupied, held and used by the Tillamooks, and to which they held the Indian title, claim and rights, are described as follows: Commencing at the mouth of the north ten mile creek about midway between the Alsea and Sien slaw River, running thence east to the summit of the Coast Range of mountains, thence north along said summit to a point due east from Cape Lookout, thence west to the Pacific Ocean at said Cape Lookout, thence in a southerly direction along said Pacific Coast line to the point of beginning.

VI

That the lands so occupied, held and used by said Too-too-to-neys are described as follows: Starting at Four Mile Creek situated four miles south of the mouth of the Coquille River on the Pacific coast running east four miles, thence following along the water shed between the south fork of the Coquille River and

the headwaters of the Flores River and Sixes River in a southeasterly direction to Illahe, (town) situated in the Rogue River drainage, thence in a northeasterly direction along the divide between the headwaters of the south fork and middle fork of the Coquille River and the headwaters of tributaries of the Rogue River and the Cow Creek tributary of the Umpqua River to Camas Valley located at a point near the easterly boundary of said unratified treaty of the land described in the unratified treaty; thence in a southerly direction following the easterly line of said land described in the unratified treaty to
8 the California state line; thence west to the Pacific Coast line; thence in a northerly direction along said coast line to the point of beginning.

VII

That the lands so occupied, held and used by the Coquilles including the Chetco tribe are described as follows: All that land lying between the easterly and westerly boundary of the land described in said unratified treaty lying between the northerly line of the land hereinbefore described as belonging to said Too-too-to-neys and a line commencing at Cut Creek or Whiskey Run or three miles north of the mouth of the Coquille River, thence in a northeasterly direction following the divide between south Slough, Island Slough, and Sumner Slough, on the north, and the drainage of the lower Coquille River on the south, thence along the divide between the south fork of Coos River on the north and the drainage of upper Coquille River on the south in a southeasterly direction to the east line of the land described in the unratified treaty at Camas Valley.

VIII

That on the dates in August, 1855 set out in said unratified treaty (sometimes called treaties because the one treaty was signed by different tribes at different times) the tribes and bands of Indians described therein signed and entered into said unratified treaty which is set out on pages 8 to 15 of said Document 25 as described in said Jurisdictional Act. Said unratified treaty reads as follows:

"Articles of agreement and convention made and concluded at the places and dates hereinafter named, in the Territory of Oregon, by Joel Palmer, Superintendent of Indian Affairs, on the part of the United States, and the following chiefs and headmen of the confederate tribes and bands of Indians residing
9 along the coast west of the summit of the Coast Range of mountains and between the Columbia River on the north

and the southern boundary of Oregon on the south, they being duly authorized thereto by their respective bands, to wit:

Lonie, Cal-he-na, Jel-kete, Albert, Kihose, Sme-ka-hite, Quick-ouse Kos-kup, Qua-mah, Kle-ick, Pah-hi, Ha-ake, Tu-e-to, Que-lis-ka, and Quo-op-pa, of the *Alcea band* of Tila-mooks; Jim, Con-chu, Toch-a-lie, Pah-ni-ka-u, No-cos-curt, Tlate-hal, He-a-kah, Sam-may, Ke-etch, and John of the *Yah-quo-nah* band of Tilamooks; Jim, Sis-nah-quo-lin, Scho-yo, Kle-con-onts, Yon-ton, Flouched, To-cot-so, Jake, Chah-qub-lah, Chin-na-quo-wash, Tu-e-uch, Ah-sis-lep, Se-cow-in, Jo-han-na, and Yet-sit, of the *Seletsa* band of Tillamooks; John, of the *Ne-a-ches-na* band of Tilamooks; Eneos, De-Chaum, John, Pos-cal, Halo-tuth, Kal-la-wot-sa, Ha-lo-gleese, Bi-cham-an, Louis, Lake-man, Jerome, Peir, and Wilson, of the *sin-slau* tribe; Jim Tim, Tom, Sam, Fat-tim, Don-quix-otte, Charley, Que-il-me, Qui-it, and Ha-lo-lea-no, of the Kal-a-wot-set or *Ump-qua* tribe; Jim 1st, Bob, John 1st, George, William, Charley 1st, Dock, Dick, Ole-man-doctor, Tom 1st, Captain, Stephen, Cal-lolt, Wol-lonch, Loch-itch, Wol-loch, Pete, Jackson, Hal-lice, Taylor, Pe-lee-gray, Joe, Sam 1st, Charles 2d Sam 2d Jim 2d, Johnson, Charley 3d, Ole-man, Jack, Tom 2d, Jim 3d, John 2d, Gabrial, Cris, Kah-tite, Ne-at-tal-woot, Jake, Quin-ul-chet, Yet-so-no, Lolkt, Damon, Ka-tow-na, Loch-hite, Ten-ach, Ki-hi-ah; How-seach, Ko-at-qua, Solomon, Lol-lotch, Skil-a-milt, Yah-who-wich, Tes-ich-man, How-new-wot, Squat-kle-ah, Ki-wot-set, Al-la-wom-mets, Too-toe, and No-whe-na, of the Kowes Bay tribe, T-sin-no-nas, Pil-le-kis, Clas-an-ta, Sat-toe, Wah-hench, Tom, Joe, Mal-o-quock, Won-ot-tlos, Mil-luck, John 1st, Charley, Che-kaw-nah, Qume-mos T-sha-saw, Kow-u-quaw, Sands, T-sis-tah-noo-ka, Mah-tlose, Chil-lah, How-ouse, Charles, Lah-lee, Noc-to-soch, O'Chayly, Klong-klus, Bill, Other-tom, Yohn, Nelson, Socks-ey, Joe-Lane, Frank, John 2d, Jim, George Bob El-kah-hut, Klo-kot-on, Lan-dish, Kitchen, and Jim-too-wah, of the *Quans-sake-nah, Klen-nah-hah, and Ke-ah-mas-e-ton bands of Nas-o-mah or Co-quille* tribe; Tag-o-ne-cia, Loo-ney, Yon, and Jim, of the *Ko-se-e-chah band of Too-too-to-neys;* Whiskers, Ten-as-tie, En-nach-nah, and Ta-wos-kah, of the *Se-qua-chee* band of Too-too-to-neys; An-ne-at-ta, Tal-ma-net-sa, Ko-chil-la, and Hust-la-no, of the *Too-too-to-ny band of Too-too-to-neys;* En-tlack, Too-whus-kah, Ka-tulch-kla, and No-get toe-it, of the *Chitco* tribe; Sin-whus-chan, En-san-e-klon, Empnah-wose-tah, and Yas-kah-chin-a-mah-tin, of the *Yah-shute band of Too-too-to-neys;* Nal-tah-nos-shah, Chah-hus-sah, Kos-sa-on, and E-ule-te-tes-tlah, of the *Whis-to-natin band of Too-too-to-neys;* Ses-tel-tuh, Yot-sa, and Hus-to-mah-say, of the *Cos-sa-to-ny band of Too-too-to-neys;* Mosquot, No-on-me-has-quah, Tuc-qua, and Cosh-nul-see,

of the *Chet-less-ing-ton band of Too-too-to-neys;* Smut-tah-ta, Too-kuas-chal-nah, Se-tah-kul, and Schal-lah, of the *Port Orford band of Too-too-to-neys;* Ah-chase, Tos-ton, Quil-see, and Yo-wolt-ma, of the *Eukie-chee band of Too-too-to-neys;* Mussle-tie and Tpo-quot, of the *Kus-so-to-ny band of Too-too-to-neys;* Non-whalt, Kloose-tla, and Eu-til-mus, of the *Kler-it-la-tel band of Too-too-to-neys;* Ult-sa-yah, Yah-sun-see, Ton-ua-nic-a-sha, Che-nu-tun, and Chris-tah-tah, of the *Te-cha-quot band of Too-too-to-neys; Tut-lel-ol-tus, En-sal-sun, Squo-che-nol-ta, Shet-nul-lus,* and Noch-nos see-yah, of the *Mack-a no-tin band of Too-too-to-neys;* Washington Tom, Chi-a-le-tin, Tie, Ni-ich-lo-sis, Tu-si-wah, Jackson, and David, of the *Cah-toch, Chin-chen-ten-tah-ta, Whis-ton, and Klen-hos-tun bands of Coquilles.*

ARTICLE 1. The above-named confederate bands of Indians cede to the United States all their right, title, and interest to all and every part of the country claimed by them included in the following boundaries, to wit: Commencing in the middle of the channel of the Columbia River, at the northwestern extremity of the purchase made of the Calapooia and Molalla bands of Indians; thence running southerly with that boundary to the southwestern point of that purchase, and thence along the summit of the Coast Range of mountains with the western boundaries of the purchase made of the Umpquas and Molallas of the Umpqua Valley, and of the Scotons, Chastes, and Grave Creeks of Rogue River Valley, to the southern boundary of Oregon Territory; thence west to the Pacific Ocean, thence northerly along said ocean to the middle of the north-
11 ern channel of the Columbia River; thence following the middle of said channel to the place of beginning: Provided, however, That so much of the country described above as is contained in the following boundaries shall until otherwise directed by the President of the United States, be set apart as a residence for said Indians, and such other bands or parts of bands as may, by direction of the President of the United States, be located thereon.

Such tract for the purpose contemplated shall be held and regarded as an Indian reservation, to wit: Commencing where the northern boundary of the seventeenth range of townships south of the base line strikes the coast; thence east to the western boundary of the eighth range of townships west of the Willamette meridian, as indicated by John B. Preston's "Diagram of a portion of Oregon Territory;" thence north on that line to the southern boundary of the third range of townships south of the base line; thence west to the Pacific Ocean; and thence southerly along the coast to the place of beginning: Provided, however, That the district west of the said eighth range of townships, between the said northern boundary of range seventeen and the

fourth standard parallel south, shall, for the term of twenty years, be held and regarded as a part of said Indian reservation, and together with the tract described by this section, as such, be subject to the laws regulating "trade and intercourse with Indian tribes" now in force, or hereafter enacted by the Congress of the United States. All of which tract shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use of such Indians as are, or may hereafter be, located thereon; nor shall any person other than an Indian be permitted to reside upon the same without the consent and permission of the Superintendent of Indian Affairs and the agent having charge of said district.

The said bands and tribes agree to remove to and settle upon the same within one year after the ratification of this convention without any additional expense to the Government other than is provided by this treaty; and until the expiration of the time specified the said bands shall be permitted to occupy and reside upon the tracts now possessed by them, guaranteeing to all
12 white citizens the right to enter upon and occupy as settlers any lands not included in said reservation, or actually enclosed by said Indians; Provided, however, That, when the public interest or convenience may require, the right of constructing roads, railroads, or other public highways, and navigating the streams or bays in said reservation, is hereby secured to the United States; And provided also, That if any band or bands of Indians residing in and claiming any portion of the country herein described shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to receive such part of the several annuities and other payments hereinafter named as a consideration for the entire country described as aforesaid as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid as consideration and payment in full for the tracts in said country claimed by them; And provided also, That where substantial improvements have been made by individuals of bands becoming parties to this treaty which they shall be compelled to abandon in consequence of said treaty, the same shall be valued under direction of the President of the United States, and payment made said individuals therefor, or, in lieu thereof, improvements of an equal extent and value, at their option, shall be made on the tracts assigned to each respectively.

ARTICLE 2. In consideration of and payment for the country hereby ceded, the United States agree to pay to the bands and tribes of Indians claiming territory and residing in said country

the several sums of money, to wit: Ten thousand dollars per annum for the first three years, commencing on or before the first day of September 1857; eight thousand dollars per annum for the term of three years next succeeding the first three; six thousand dollars per annum for the term of three years next succeeding the second three, and three thousand dollars per annum for the term of six years next succeeding the third three.

All of which several sums of money shall be expended for the use and benefit of the confederated bands, under the direction of the President of the United States, who may from time to
13 time, at his discretion, determine what proportion thereof shall be expended for such objects as, in his judgment, will promote their well-being and advance them in civilization; for their mutual improvement and education; for buildings, opening and fencing farms, breaking land, providing terms, stock, agricultural implements, seed, &c.; for clothing, payment of mechanics and farmers, and for arms and ammunition.

ARTICLE 3. The United States agree to pay said Indians the additional sum of thirty thousand dollars, a portion whereof shall be applied to the payment for such articles as may be advanced them at the time of signing this treaty, and in providing, after the ratification thereof, and prior to their removal, such articles as may be deemed by the President essential to their wants; for the erection of buildings on the reservation, fencing and opening farms; for the purchase of teams, farming implements, tools, and seeds; for the payment of employees, and for subsisting the Indians the first year after their removal.

ARTICLE 4. In addition to the consideration specified, the United States agree to erect at suitable points on the reservation two sawmills, two flouring mills, four schoolhouses, and two blacksmith shops, to one of which shall be attached a tin shop; and for two sawyers, two millers, one superintendent of farming operations, three farmers, one physician, four school-teachers, and two blacksmiths, a dwelling house and the necessary outbuildings for each; and to purchase and keep in repair, for the time specified for furnishing employes, all necessary mill fixtures, mechanical tools, medicines, books, and stationery for schools, and furniture for employes.

The United States further engage to secure and pay for the services and subsistence for the term of fifteen years, of three farmers, two blacksmiths, two sawyers, two millers; and for the term of twenty years, of one physician, one superintendent of farming operations, and four school-teachers.

The United States also engage to retain in the service one Indian agent, and to erect at the most central suitable point agency buildings, where such agent shall reside.

14 ARTICLE 5. The half-breeds, legal representatives of the bands and tribes being parties to this treaty, who reside outside of the reservation shall be allowed to draw the share of annuity payments to which they may be entitled, either in cash or goods, at their option; and when residing upon the reservation they shall be entitled to all the benefit of annuity as well as other payments; but no half-breed shall be permitted to reside upon said reservation without the concurrent consent of the superintendent and agent.

ARTICLE 6. The President may, from time to time, at his discretion, cause the whole, or such portion as he may think proper, of the tract that may now or hereafter be set apart as a permanent home for these Indians, to be surveyed into lots and assigned to such Indians of the confederated bands as may wish to enjoy the privilege and locate thereon permanently; to a single person over twenty-one years of age, forty acres; to a family of two persons, sixty acres; to a family of three and not exceeding five, eighty acres; to a family of six persons and not exceeding ten, one hundred and twenty acres; and to each family over ten in number, twenty acres for each additional three members. And the President may provide such rules and regulations as will secure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon; and he may at any time, at his discretion, after such person or family has made location on the land assigned as a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale, or forfeiture, which condition shall continue in force until a State constitution, embracing such lands within its limits, shall have been formed, and the legislature of the State shall remove the restriction; Provided, however, That no State legislature shall remove the restriction herein provided for without the consent of Congress; And provided also, That if any person or family shall at any time neglect or refuse to occupy or till a portion of the land assigned, and on which they have located, or shall roam from place to place, indicating

15 a desire to abandon said home, the President may, if the patent shall have been issued, revoke the same, and if not issued, cancel the assignment; and may also withhold from such person or family their portion of the annuities or other money due

them, until they shall have returned to such permanent home and resumed the pursuits of industry; and in default of their return, the tract may be declared abandoned, and thereafter assigned to some other person or family of Indians residing on said reservation.

ARTICLE 7. The annuities of the Indians shall not be taken to pay the debts of individuals.

ARTICLE 8. The confederated bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredations on the property of said citizens; and should any one or more of the Indians violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned; or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities; nor will they make war on any other tribe of Indians, except in self-defense, but submit all matters of difference between them and other Indians to the Government of the United States, or its agents, for decision, and abide thereby; and if any of the said Indians commit any depredations on other Indians, the same rule shall prevail as that prescribed in the case of depredations against citizens.

ARTICLE 9. For the purpose of establishing uniformity of laws, rules, and regulations among the various bands of Indians being parties to this treaty, and to give greater security to person and property, it is hereby agreed that the Congress of the United States, with the approval of the President, shall have power to enact laws for the government of said Indians.

ARTICLE 10. In order to prevent the evils of intemperance among said Indians, it is hereby provided that if any one of them shall drink liquor to excess, or procure it for others to drink, his or
16 her proportion of the annuities may be withheld from him or her for such time as the President may determine.

ARTICLE 11. The United States agree to expend a sum of money, not exceeding ten thousand dollars, in opening and constructing wagon roads between the different settlements on said reservation, and from the saw and flouring mills herein provided for to said settlements; and in the event of a failure to effect secure landings for vessels in the transportation of annuity goods within said reservation, the additional sum, not exceeding ten thousand dollars, shall be expended by the United States in opening and constructing a wagon road from some point at or near the mouth of Ne-aches-na or Salmon River to the settlements in the Willamette Valley, and one wagon road from some navigable point of Yah-quo-nah or Alcea River to the valley of the Willamette.

ARTICLE 12. The United States engage to establish and maintain a military post on said reservation whensoever the peace and safety of the Indians residing thereon shall render the same necessary.

ARTICLE 13. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Joel Palmer, on the part of the United States and the undersigned chiefs, headmen, and delegates of the said confederated bands, have hereunto set their hands and seals this eleventh day of August, eighteen hundred and fifty-five.

Signed in presence of Cris. Taylor, Secretary to Treaty. W. W. Raymond, Sub-Indian Agent. R. W. Dunbar. B. M. Palmer.

Joel Palmer, (L. S.) Superintendent of Indian Affairs, Oregon Territory.

Loni, second chief, his x mark [L. S.]
Cal-he-na, his x mark [L. S.]
Tel-kite, his x mark [L. S.]
Albert, his x mark [L. S.]
Ki-hosi, first chief, his x mark [L. S.]
Sme-ka-hite, his x mark [L. S.]
Quink Ouse, his x mark [L. S.]
Kos-kup, his x mark [L. S.]
Que-mals, his x mark [L. S.]
He-a-kah, his x mark [L. S.]
17 Sam-may, his x mark [L. S.]
Ke-etch, his x mark [L. S.]
John, his x mark [L. S.]
Jim Selitsa, his x mark [L. S.]
Kle-lek, his x mark [L. S.]
Pah-hi, his x mark [L. S.]
Ha-ake, his x mark [L. S.]
Que-e-to, his x mark [L. S.]
Que-lis-ke, his x mark [L. S.]
Quo-ap-pa, his x mark [L. S.]
Jim, his x mark [L. S.]

Conchu, his x mark [L. S.]
Toch-alie, his x mark [L. S.]
Pah-ni-ka-u, his x mark [L. S.]
Wo-cos-konts, his x mark [L. S.]
Tlate-hal, his x mark [L. S.]
Sis-nah-quo-lin, his x mark [L. S.]
Scho-jo, his x mark [L. S.]
Kle-con-outs, his x mark [L. S.]
Ton-ton, his x mark [L. S.]
Touched, his x mark [L. S.]
To-cot-so, his x mark [L. S.]
Jake, his x mark [L. S.]
Chah-quo-lah, his x mark [L. S.]
Chin-ni-co-wash, his x mark [L. S.]
Tu-e-uch, his x mark [L. S.]
Ah-sis-less, his x mark [L. S.]
Lu-con-in, his x mark [L. S.]
Is-han-na, his x mark [L. S.]
Yet-sit, his x mark [L. S.]
John, his x mark [L. S.]

We, the chiefs, headmen, and delegates of the Sueslan and Winchester Bay bands of the Kal-e-wat-set or Umpqua tribe of Indians, and the several bands of Kowes Bay Indians, after having had fully explained to us the above treaty, do hereby accede to its provisions, and affix our signatures, or marks, this 17th day of August, 1855.

Signed in the presence of Cris. Taylor, Secretary; R. B. Metcalfe, Sub-Indian Agent; E. P. Drew, Sub-Indian Agent; Jn. B. Gagnier, Interpreter; John Fleet, Interpreter; J. C. Clark, Interpreter; R. W. Dunbar, L. P. Brown, M. H. Hill, John Gale.

Eneos, his x mark [L. S.]
De-chaum, his x mark [L. S.]
John, his x mark [L. S.]
Peter, his x mark [L. S.]
Poseal, his x mark [L. S.]
Ha-lo-teeth, his x mark [L. S.]
Kal-la-hat-sa, his x mark [L. S.]
Ha-lo-gleese, his x mark [L. S.]

Bi-chauma, his x mark [L. S.]
Louis, his x mark [L. S.]
Lake-map, his x mark [L. S.]
Jerome, his x mark [L. S.]
Peir, his x mark [L. S.]
Wilson, his x mark [L. S.]
Tom, his x mark [L. S.]
Captain, his x mark [L. S.]

Jim, his x mark [L. S.]
Tim, his x mark [L. S.]
Tom, his x mark [L. S.]
Sam, his x mark [L. S.]
Fat-tim, his x mark [L. S.]
Jim, 1st chief, his x mark [L. S.]
Bob, 2d chief, his x mark [L. S.]
John, his x mark [L. S.]
George, his x mark [L. S.]
William, his x mark [L. S.]
Charley, his x mark [L. S.]
Dock, his x mark [L. S.]
Dick, his x mark [L. S.]
Ale-man-doctor, his x mark [L. S.]
Jim 2d, his x mark [L. S.]
John, his x mark [L. S.]
Stephen, his x mark [L. S.]
Cal-loih, his x mark [L. S.]
Wal-lauch, his x mark [L. S.]
Loch-steh, his x mark [L. S.]
Wal-loch, his x mark [L. S.]
Pete, his x mark [L. S.]
Jackson, his x mark [L. S.]
Hal-lice, his x mark [L. S.]
Don-Quixotte, his x mark [L. S.]
Charly, his x mark [L. S.]
John, his x mark [L. S.]
Que-el-ma, his x mark [L. S.]
Qui-it, his x mark [L. S.]
Ha-lo-wa-wa, his x mark [L. S.]
Taylor, his x mark [L. S.]
Pe-lee-gray, his x mark [L. S.]
Joe, his x mark [L. S.]
Sam, his x mark [L. S.]

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Charley, his x mark [L. S.]
San 2d, his x mark [L. S.]
Jim, his x mark [L. S.]
Johnson, his x mark [L. S.]
Charley 2d, his x mark [L. S.]
Oleman, his x mark [L. S.]
Jack, his x mark [L. S.]
Tom, his x mark [L. S.]
Gabriel, his x mark [L. S.]
Cris, his x mark [L. S.]
Kah-tite, his x mark [L. S.]
Ne-ah-tal-woot, his x mark [L. S.]
Jake, his x mark [L. S.]
Quin-ultchet, his x mark [L. S.]
Yat-se-no, his x mark [L. S.]
Lalkt, his x mark [L. S.]
Damon, his x mark [L. S.]
Ka-ton-na, his x mark [L. S.]
Loch-hite, his x mark [L. S.]
Ten-ach, his x mark [L. S.]
Ki-hi-ah, his x mark [L. S.]
Hon-slach, his x mark [L. S.]
Ko-ah-qua, his x mark [L. S.]
Solomon, his x mark [L. S.]
Lol-lotch, his x mark [L. S.]
Skil-a-milt, his x mark [L. S.]
Yah-who-wich, his x mark [L. S.]
Tes-ich-man, his x mark [L. S.]
Hon-nu-wot, his x mark [L. S.]
Squat-kle-ah, his x mark [L. S.]
Ki-u-ot-set, his x mark [L. S.]
Al-la-wom-mets, his x mark [L. S.]
Too-tee, his x mark [L. S.]
No-whe-na, his x mark [L. S.]

We, the chiefs, headmen, and delegates of the Quans, Sakenah, Klen-nah-hah, and Ke-ah-mas-e-ton bands of Nas-o-mah or Coquille tribe of Indians, after having had fully explained to us the above treaty, do hereby accede to its provisions, and affix our signatures or marks, this 23 day of August, 1855.

T-sin-no-nas, his x mark [L. S.]
Pil-le-klo, his x mark [L. S.]
Kias-won-ta, his x mark [L. S.]
Sat-tne, his x mark [L. S.]
Wah-hench, his x mark [L. S.]
Tom, his x mark [L. S.]
Joe, his x mark [L. S.]
Mal-a-quack, his x mark [L. S.]
Won-at-tlos, his x mark [L. S.]
Mil-luck, his x mark [L. S.]
John, his x mark [L. S.]
Charley, his x mark [L. S.]
Che-han-nah, his x mark [L. S.]
Kume-mas, his x mark [L. S.]
Tsha-san, his x mark [L. S.]
Kon-u-quan, his x mark [L. S.]
Sands, his x mark [L. S.]
T-sis-tah-noo-ka, his x mark [L. S.]
Mah-T-lose, his x mark [L. S.]
Chil-lah, his x mark [L. S.]
Hon-ouse, his x mark [L. S.]

Charles, his x mark [L. S.]
Lah-Lee, his x mark [L. S.]
Noc-to-soch, his x mark [L. S.]
O-Charley, his x mark [L. S.]
Klang-Kus, his x mark [L. S.]
Bill, his x mark [L. S.]
Other-tom, his x mark [L. S.]
Yohn, his x mark [L. S.]
Nelson, his x mark [L. S.]
Locks-ey, his x mark [L. S.]
Jo-Lane, his x mark [L. S.]

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Frank, his x mark [L. S.]
John, his x mark [L. S.]
Jim, his x mark [L. S.]
George, his x mark [L. S.]
Bale, his x mark [L. S.]
El-kah-hus, his x mark [L. S.]
Klo-Kat-on, his mark [L. S.]
San-dish, his x mark [L. S.]
Kitchen, his x mark [L. S.]
Jim-too-Wah, his x mark [L. S.]

Signed in presence of Chris. Taylor, Secretary: John Flett, Interpreter; Jn. Bts. Gagner, Interpreter; Joseph E. Clark, Interpreter; E. P. Drew, Sub-Indian Agent; R. W. Dunbar.

We, the chiefs, headmen, and delegates of the Se-quate-sah, Kose-a-chah, Euka-che, Yah-shute, Too-too-to-ney, Mack-a-no-tin, Kos-sul-to-ny, Mussle, Cos-sa-to-ny, Klu-it-to-tel, Te-cha-quot, Chet-less-ing-ton, and Wis-tona-tin bands of Tootootony tribe and Chet-co tribe of Indians, after having had fully explained to us the above treaty, do hereby accede to its provisions, with the following proviso:

That the canoes belonging to the members of our respective bands shall either be transported to the district designated as a reservation, or other canoes or boats furnished in lieu thereof, or the value of the same paid the Indians by the Government of the United States, at the discretion of the latter, and that means of transportation for the old, infirm, and children, with goods, wares, and chatels belonging to the members of the said bands, and subsistence for members thereof during time of removal, shall also be furnished by, and at the expense of, the Government of the United States.

In witness whereof we hereunto affix our signatures, or marks, this thirtieth day of August 1855.

Sins band

Ta-Wos-Ka, his x mark [L. S.]

Too-too-to-ny

An-ne-at-ta, his x mark [L. S.]
Tal-ma-net-sa, his x mark [L. S.]
Ko-chil-lah, his x mark [L. S.]
Hurt-la-no, his x mark [L. S.]

Chet-co tribe

Eu-tiach, first chief, his x mark [L. S.]
Too-Whus-ka, his mark [L. S.]
Ka-tuleh-Kla, his x mark [L. S.]
No-get-toe-it, his x mark [L. S.]

Se-qua-a-chan

Whiskus, his mark [L. S.]
Ten-as-tle, his x mark [L. S.]
Eu-Wach-nah, his x mark [L. S.]

Port Orford band

Smut-tah-ta, his x mark [L. S.]
Too-Kus-Chol-nah, his x mark [L. S.]
Se-tah-Kue, his x mark [L. S.]
Seah-lah, his x mark [L. S.]

20 Jashuts

Sin-Whiss-Chan, his x mark [L. S.]
Eu-San-e-Klon, his x mark [L. S.]
Eu-nah-nese-tah, his x mark [L. S.]
Yas-Kat-chin-a-mah-tin, his x mark [L. S.]

Whis-to-na-tin

Nal-tah-wos-shah, his x mark [L. S.]
Chah-hus-sah, his x mark [L. S.]
Kos-sa-on, his x mark [L. S.]
E-tule-te-tes-tlah, his x mark [L. S.]

Coc-sa-to-ny

Ses-tel-tus, his x mark [L. S.]
Tat-sa, his x mark [L. S.]
Hus-to-Mah-say, his x mark [L. S.]

Chet-less-ing-ton

Mos-quot, his x mark [L. S.]
No-on-me-has-quah, his x mark [L. S.]
Tac-qua, his x mark [L. S.]
Cosh-nul-see, his x mark [L. S.]

Ko-so-e-cha band

Tag-o-ne-cia, first chief, his x mark [L. S.]
Loo-ney, his x mark [L. S.]
John, his x mark [L. S.]
Jim, his x mark [L. S.]

Euku band

Ah-Chase, his x mark [L. S.]
Tos-lon, his x mark [L. S.]
Quil-su, his x mark [L. S.]
Yo-Walt-Ma, his x mark [L. S.]

Kos-sul-to-ny

Mussles-Tie, his x mark [L. S.]
Too-Quot, his x mark [L. S.]

Klu-it-ta-tel

Non-Wholt, his x mark [L. S.]
Koose-tia, his x mark [L. S.]
Eu-til-Mus, his x mark [L. S.]

Te-cha-quot

Ult-sa-yah, his x mark [L. S.]
Yah-sun-su, his x mark [L. S.]
Ton-wa-nec-a-she, his x mark [L.S.]
Che-nun-tun, his x mark [L. S.]
Chis-tah-tah, his x mark [L. S.]

Mack-a-no-tin

Tut-tel-ol-tus, his x mark [L. S.]
Eu-Sol-Sun, his x mark [L. S.]
Squo-che-nol-la, his x mark [L. S.]
Shet-nul-lus, his x mark [L. S.]
Nech-was-su-yar, his x mark [L. S.]

Signed in the presence of Cris. Taylor, Secretary; Jery McGire, R. W. Dunbar, August V. Kautz, 2d Lieut. 4th Infantry; Dr. R. Glisan, U. S. A; E. P. Drew, John Flett, J. E. Clark.

We, the chiefs, headmen, and delegates of the Cah-toch-say, Chin-chen-ten-tah-ta, Whis-ton, and Klen-hos-tun bands of Coquille tribe of Indians, after having had fully explained to us the above treaty do hereby accede to its provisions and affix our signatures or marks, this 8th day of September, 1855.

Washington, his x mark [L. S.]
Tom, his x mark [L. S.]
Chi-a-le-tin-tie, his x mark [L. S.]
Ni-ich-lo-sis, his x mark [L. S.]
Tu-si-uah, his x mark [L. S.]
Jackson, his x mark [L. S.]
David, his x mark [L. S.]

21 Signed in the presence of Cris. Taylor, Secretary; August V. Kautz, 2d Lieut. 4th Infantry; R. W. Dunbar; John Flett, Interpreter; Henry Hill Woodward.

IX

That anticipating the ratification thereof on the 9th day of November, 1855, the President of the United States set aside what was known as the Coast Reservation by executive order which executive order and letters referred to therein were as follows:

"GENERAL LAND OFFICE,
September 10, 1855.

To the Hon. JAMES CAMPBELL, Acting Secretary of the Interior.

SIR: I have the honor to submit herewith two letters from the Acting Commissioner of Indian Affairs of the 29th June last and the 6th instant, recommending a large reservation of land, for the Coast Umpqua and Willamette Tribes of Indians in Oregon

Territory, as shown by the blue shaded lines and the enclosed diagram marked A taken from the general map received with the Acting Commissioner's letter of the 6th instant embracing as will be seen, about 100 miles of the Pacific coast from "Cape Look Out" to a point midway between the Umpqua and Sinslaw (Sciisticim) rivers, by an average depth of 20 miles.

Previous to issuing the instructions requested by the Acting Commissioner I respectfully recommend that the order of the President be first obtained for the proposed reservation.

I am

Very respectfully, Your obd. servant,

(Sgd.) THOS. A. HENDRICK,
Commissioner."

22 "DEPARTMENT OF INTERIOR,
November 8, 1855.

SIR: I herewith submit for your approval a proposed reservation for Indians on the coast of Oregon Territory recommended by the Commissioner of Indian Affairs and submitted to the Department by the Commissioner of the General Land Office for the procurement of your order on the subject in letter of the 10th September last.

Before submitting the matter to you I desired to have a full report of the subject from the Indian Office and the letter of the head of that Bureau of the 29th ultimo having been received and considered I see no objection to the conditional reservation asked for subject to future curtailment if found proper or entire relief thereof should Congress not sanction the object rendering this withdrawal of the land from white settlement at this time advisable. A plat marked A and indicating the boundaries of the reservation accompanies the papers and has prepared thereon the necessary order for your signature should you think fit to sanction the reservation.

I have the honor to be

Very respectfully, Your obd servant,

(Sgd.) R. MCCLELLAND,
Secretary.

The PRESIDENT."

"NOVEMBER 9, 1855.

"The reservation of the land within the blue shaded lines is hereby made for the purposes indicated in the letter of the Commissioner of the General Land Office of the 10th September last and letter of the Secretary of the Interior of the 8th November 1855.

FRANKLIN PIERCE."

That said executive order of the President which limited the reservation "for the purposes indicated thereby" made the

reservation for the "Coast, Umpqua and Willamette
23 tribes." That said Coast Reservation consisted of a wide strip of land between the summit of the coast range of mountains and the Oregon coast lying immediately south of Cape Lookout and marked on page 51 of a map in Royce's Indian Land Cession of the United States as Parcels 578, 579, 479 and 578 (repeated for a lower tract) which descriptions are by reference hereto made a part hereof. That the boundaries were approximately that of the reservation set out in said unratified treaty.

X

That the lands of the Tillamooks herein described lay almost wholly within the confines of said reservation and said lands were taken by the Defendant by virtue of said executive order.

That the lands of the Coquilles and Too-too-to-neys were wholly outside said reservation and such lands were taken by inducing and coercing said Indians to move from their own lands on to said reservation upon the promise that said treaty would be ratified and the terms carried out.

After the said treaty had been signed and without awaiting the ratification thereof the United States by various Acts of Congress and Executive Orders and acts of physical dispossession took over the entire control of said lands of the Coquilles and Too-too-to-neys together with two hundred billion feet of timber, valuable minerals and fishing rights contrary to the said plaintiffs' right by immemorial occupancy to the said lands and without their consent and against their will and without any consideration appropriated the said land, timber, minerals and fishing rights for the use and benefit of the Government of the United States. Said land, timber, minerals and fishing rights at the dates taken by defendant were of great value, to-wit, $5,000,000 for each tract.

24 That said Acts of Congress, executive orders and other acts of dispossession by defendant opened up said lands for settlement, authorized patents and land grants by which persons other than said Indians were put into possession thereof to the exclusion of plaintiffs.

That rights acquired by said plaintiffs by virtue of reservations set aside for them by executive orders and Acts of Congress were violated by subsequent executive orders and Acts of Congress.

That the said plaintiffs became and were the owners of the lands embraced in said reservations and said defendant appropriated said lands and without their consent and against their will and without any consideration appropriated the said land, timber, minerals and fishing rights for the use and benefit of the Government of the United States.

XI

That said plaintiffs were Coast tribes and when said reservation was set apart for Coast, Umpqua and Willamette tribes they became entitled jointly with such other Indians therein named to its lands for a reservation to the exclusion of Indians not therein named.

That defendant violated their said rights in said reservation to their great damage by placing Rogue River, Chasta and other Indians not included in the terms of said reservation and by taking the lands as hereinafter described.

XII

That by executive order of December 21, 1865, the defendant took away from said Indians without authority of law to their great damage said tract No. 479. That by Act of Congress March 3, 1875 (18 Stat. 420) the defendant took away said two tracts each No. 578, leaving only tract No. 578.

25 Under Act of February 8, 1874 (24 Stat. 388) a portion of the diminished reservation was allotted in severalty to certain Indians.

That by agreement of October 31, 1892 as ratified by the Act of August 15, 1894, 28 Stat. 286, 323, which did not embrace all the plaintiff Indians, the unallotted lands of the diminished reserve, excepting five sections of land, were ceded to and taken over by defendant.

Under the Act of May 13, 1910, 36 Stat. 367, defendant unlawfully disposed of said sections of land.

XIII

That all of said tribes including bands and tribes having entered into no treaty ratified or unratified claim damages because of violations of agreements, Acts of Congress and executive orders and because of Acts of Congress and executive orders and acts of dispossession, relating to realty, personal property, rights of possession, rights to minerals, timber rights, fishing and hunting rights.

XIV

Plaintiffs have not in any way voluntarily aided, abetted or given encouragement to rebellion against the United States but have actively aided and assisted the United States in its prosecution of campaigns against other hostile Indian tribes supplying the United States army with numerous scouts and soldiers.

XV

Plaintiffs have not heretofore submitted any claim against the United States to this Court nor in any Court of the United States based upon the subject matter of this suit.

26 XVI

The Siletz Confederated Tribes of Indians and the Willamette Valley Confederated Tribes of Indians have been included as parties plaintiff for the reason that certain members of various bands or tribes mentioned in the first paragraph of this petition have so confederated and are sometimes so designated. The Confederated Tribes of the Grande Ronde Community, Oregon are made parties hereto because they are organized by Constitution under the Act of June 18, 1934 and are authorized by such Act to bring and prosecute actions at law.

XVII

Wherefore, by reason of the premises aforesaid, plaintiffs sue the United States and pray that this Honorable Court will render judgment for damages in the amount of $9,500,000.00, and such additional amounts as will fairly compensate plaintiffs for each and all of the said violations by the defendant of the rights of the plaintiffs and for such further relief including interest as may to the Court seem proper.

EVERETT SANDERS,
Shoreham Building, Washington, D. C.,
JOHN G. MULLEN,
E. L. CRAWFORD,
Attorneys for Plaintiffs.

L. A. GRAVELLE,
DOUGLAS WHITLOCK,
Of Counsel.

27 [*Duly sworn to by Everett Sanders; jurat omitted in printing.*]

29 *General traverse to the second amended petition*

Filed April 27, 1943

And now comes the Attorney General, on behalf of the United States, and answering the second amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the second amended petition be dismissed.

NORMAN M. LITTELL,
Assistant Attorney General.

Argument and submission of case

November 5, 1943

On November 5, 1943, the case was argued and submitted on merits by Mr. Everett Sanders for plaintiff, and by Mr. Charles E. Small for defendant.

31 *Special findings of fact, conclusion of law and opinion of the court by Littleton, Judge.*

Filed April 2, 1945

Mr. Everett Sanders for plaintiffs.

Mr. John G. Mullen, Mr. E. L. Crawford, Mr. L. A. Gravelle, Mr. Douglas Whitlock, and *Mr. Edward F. Howrey* were on the brief.

Mr. Charles H. Small, with whom was *Mr. Assistant Attorney General Norman M. Littell*, for defendant.

Mr. Raymond T. Nagle was on the brief.

32 Plaintiffs bring this suit under clause (b) of the special jurisdictional act, hereinafter mentioned, to recover compensation for certain lands on the coast of Oregon to which certain of plaintiff tribes who were parties to an unratified treaty dated August 11, 1855 claim they had original Indian title through exclusive possession and occupancy from time immemorial, which lands were taken in 1855 and subsequently by the United States without payment of just compensation.

The provision of the jurisdictional act under which this suit is brought authorizes the bringing of suit and the entry of judgment for compensation if the claim of original Indian title by occupancy at and long prior to the date of the unratified treaty of August 11, 1855 is established.

It is admitted by defendant that certain plaintiff tribes and bands who were parties to the unratified treaty of 1855 were moved off and deprived of the use and occupancy of the lands which they claimed in 1855 and were placed on certain land, a portion of which was and is claimed by the Tillamooks Tribe. This land consisted of a reservation carved out of the entire area described in said treaty of 1855 as being ceded, but it is contended by defendant that such of plaintiff tribes or bands who were parties to the unratified treaty of 1855 whose lands were included in the terms thereof are not entitled to recover compensation. It is insisted

(1) That the tribes and bands who are entitled under the terms of the jurisdictional act to maintain this suit have not proven by sufficient evidence that they exclusively occupied and used the area for which they now claim compensation, or any definite part thereof, at and long prior to 1855.

(2) That they cannot recover on the basis of original title, claim, or rights in, to, or upon the whole or any part of the lands for which they make claim in the absence of a showing of prior recognition or approval by Congress as against the sovereign rights of the United States of such original Indian title, which title, it is contended, was never recognized by Congress as to these plaintiffs, or any of them; and

(3) That certain of the tribes and bands made plaintiffs herein were not parties to the treaty of 1855, and that
33 certain of the tribes and bands, made plaintiffs in the petition, who were parties to certain unratified treaties made in 1851 have been paid by Congress under the acts of June 7, 1897 and August 24, 1912 in full for their claims in respect of the lands which they claimed had been taken.

Counsel also contend that the "Coast Reservation", consisting of about 1,100,000 acres as created by an Executive Order of November 9, 1855, was a conditional reservation for Indian purposes through a withdrawal of lands from public use and settlement and not a permanent Indian reservation, as originally created, for the sole and exclusive use and occupancy of any of plaintiff tribes or other Indians through a ratified treaty, agreement, or act of Congress, such as would give any of plaintiffs beneficial ownership thereto, for their exclusive occupancy and use, and render the United States liable for compensation as a result of subsequent reductions or diminution of the temporary reservation so created.

Plaintiffs, the Tillamook, Coquille, Too-too-to-ney, and the Chetco tribes who were parties to the unratified treaty of August 11, 1855, who have never been paid and who are entitled to maitain this suit under clause (b) of the jurisdictional act, insist that they have established original Indian title through exclusive use and occupancy of the lands within areas herein claimed by them, which lands were included in the total area described in the unratified treaty of 1855. They further insist that no specific act of Congress directly recognizing their original Indian title is necessary to be shown as a condition to their right to recover under the terms of the jurisdictional act, and that the United States under its long-established Indian policy adopted by Congress had, long prior to 1855, and did then recognize such original Indian

title and rights in lands used and exclusively occupied by the Indian tribes, including plaintiffs, and that such original Indian title of these particular plaintiffs was never legally extinguished; they, therefore, insist that they are entitled to just compensation under the jurisdictional act for the lands to which they had original use and occupancy title which, they contend, were taken by the Government in 1855.

34 The only question now before the court is the legal and equitable right of plaintiffs under the provisions of the jurisdictional act and the evidence to recover compensation (1) on the basis of original Indian title for the lands claimed, and (2) on the basis of alleged exclusive use and occupancy rights in and to certain portions of the land originally included within the "Coast Reservation;" the amount of recovery and the amount of offsets, if any, being reserved for further proceedings under rule 39 (a).

Special findings of fact

1. Clause (b) of the special jurisdictional act under which this suit was brought confers upon this court jurisdiction to hear, adjudicate, and render final judgment in and upon "any and all legal and equitable claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon the whole or any part of the lands and their appurtenances occupied by the Indian tribes and bands described" in the unratified treaty of August 11, 1855, "at and long prior to the dates thereof." Certain tribes, which also signed this unratified treaty of 1855, but which are not parties to this suit, were expressly excluded by the jurisdictional act because separate provisions had been made by Congress with respect to their claims. The Indians so excluded were the Coos Bay, Lower Umpqua, and Siuslaw tribes. Certain other tribes and bands made plaintiffs in the petition herein who were not parties to the unratified treaty of 1855, and who the defendant contends are not entitled to maintain suit or to recover under the terms of the jurisdictional act, will be referred to hereinafter.

2. March 3, 1847 (9 Stat. 203), Congress passed an act to amend the act of June 30, 1834 (4 Stat. 735), "for the organization of the Department of Indian Affairs," and to amend an act of the same date (4 Stat. 729) "to regulate trade and

intercourse with the Indian tribes." in section 1 of which act of 1847 it was provided "That the limits of each superintendency, agency, and subagency shall be established by the Secretary of War, either by tribes or geographical boundaries; and the superintendents, agents, and subagents shall be furnished with offices for the transaction of the public business, and the agents and subagents with houses for their residences, at the expense of the United States * * *." By the act of August 14, 1848 (9 Stat. 323) Congress created the territory of Oregon, within the area of which lived various Indian tribes in addition to plaintiff tribes and bands, and there was inserted in sec. 1 of that act, the provision that nothing therein contained "shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed." This provision was made applicable to all territories and territorial governments which embraced Indians (R. S. 1839, 1840).

June 5, 1850 (9 Stat. 437), Congress passed an act entitled "An act authorizing the Negotiation of Treaties with the Indian Tribes in the Territory of Oregon, for the Extinguishment of their Claims to Lands lying west of the Cascade Mountains, and for other purposes." Sec. 1 of this act authorized the President to appoint one or more commissioners to negotiate treaties with the several tribes for the extinguishment of their claims to lands lying west of the Cascade Mountains; and, if practicable, for their removal east of said mountains. The President was also directed to obtain their assent and submission "to the existing laws regulating trade and intercourse with the Indian tribes in the other Territories * * *." Sec. 2 authorized the appointment, by and with the advice and consent of the Senate, of a superintendent of Indian Affairs for the Territory of Oregon to exercise a general superin-

tendence over all Indians in Oregon and to exercise and perform all powers and duties assigned by law to other Indian superintendents. Sec. 4 authorized the President, by and with the advice and consent of the Senate, to
36 appoint one or more Indian agents, not exceeding three, to perform all the duties as its agent to such tribe or tribes as should be assigned to him by the superintendent at the direction of the President. Sec. 5 provided "That the law regulating trade and intercourse with the Indian tribes east of the Rocky Mountains, or such provisions of the same as may be applicable, be extended over the Indian tribes in the Territory of Oregon." Sec. 6 appropriated $25,000 to carry into effect the provisions of the act. Subsequent appropriations were made from time to time to carry out the provisions of the act and, also, for expenses of negotiating and making treaties with the Oregon Indians for extinguishment of their claims to lands.

The superintendent and agents were forthwith appointed. Anson Dart was appointed Indian superintendent and was later succeeded by General Joel Palmer. Thereafter, under authority, direction, and instructions of the Congress and the President, Dart and Palmer negotiated various treaties in 1851 and subsequently with various tribes and bands of Indians in Oregon, including the unratified treaty of August 11, 1855 made by General Palmer with certain of plaintiff tribes and bands for extinguishment of original Indian title to lands claimed and occupied by them. The Indian tribes, parties to this treaty of 1855, were the tribes and bands of Tillamooks, the Sinslaw or Siuslaw, the Umpqua, the Kowes Bay or Coos Bay, the Coquille or Nas-o-mah, the Too-too-to-ney, and the Chetco.

Prior to the negotiation and signing of the treaty of August 11, 1855, nineteen separate treaties had been negotiated and made in 1851 with various tribes and bands of Indians, including the Tillamook (North), not plaintiff Tillamooks tribe; the Clatsop (plaintiff herein); the Neha-lum (plaintiff herein), and various bands of the Chinook tribe (also a plaintiff herein).

Six other treaties were negotiated, made, and signed in 1853, 1854, and 1855 by Commissioner Anson Dart or by Gen. Palmer, assisted by the Indian agents, with the various

tribes and bands named therein, for extinguishment of Indian claims of original Indian tities. These six treaties referred to in clause (a) of the jurisdictional act were
37 ratified. None of the claims made in this suit is directly based on those treaties.

The unratified treaty of August 11, 1855, with which we are here concerned and which, as hereinafter stated, was not submitted to the Senate until February 11, 1857, was not rejected by the Senate but was simply not reported out by the Committee on Indian Affairs to which it had been referred. Apparently the reason this treaty of August 11, 1855, and certain treaties made with various tribes and bands in 1851 were not reported out by the Senate Committee for action by the Senate was because the August 11, 1855, treaty described the land to be ceded as overlapping at the north portion certain land claimed by the North Tillamooks, Chinook, Clatsop, and Ne-ha-lum tribes who did not sign the 1855 treaty and with whom a separate treaty in 1851 had been negotiated and signed; and, also, because certain other treaties negotiated and signed in 1851 with certain other tribes and bands were in effect superseded by subsequent treaties made with some of the same tribes and bands in 1853, 1854, and 1855, which subsequent treaties had been ratified.

Seven of the tribes and bands with whom treaties had been made in 1851, but which were not ratified, and with which tribes no subsequent treaty was made and ratified, were, by the acts of June 7, 1897, 30 Stat. 62, and August 24, 1912, 37 Stat. 518, 535, paid for their claims to lands of which they had been deprived as a result of the nonratification of the 1851 treaties with them. These particular lands had been described in seven separate unratified treaties, and the amounts so paid by these acts of Congress were, pursuant to the provisions of the acts, accepted by said tribes and bands in full satisfaction of all claims for the lands described in and ceded by said 1851 unratified treaties. The other twelve tribes and bands with whom treaties were made in 1851, but not ratified, appear to have been included in other treaties negotiated, made, and ratified, as above mentioned, in 1853, 1854, and 1855.

The seven tribes and bands whose treaties of 1851 were not ratified and who were not included in other ratified treaties were as follows:

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Tribe	Date of Treaty in 1851
Clatsop tribe	August 5
North Tillamook tribe, including the Ne-ha-lum tribe (not plaintiff Tillamooks)	" 7
Nuc-quee-clah-we-muck band of Chinook tribe	" 7
Kathlamet band of Chinook tribe	" 9
Waukikum " " " "	" 8
Wheelappa " " " "	" 9
Lower " " " "	" 9

3. Congress enacted provisions from time to time and made various appropriations to carry out and fulfill ratified treaties made by Anson Dart, Gen. Palmer, and others with various tribes of Oregon Indians (some of whom are plaintiffs herein) for the extinguishment by cession to the United States of their claims of original use and occupancy title to lands. Some of those ratified treaties were (1) Treaty of September 10, 1853 (10 Stat. 1018), with the Rogue River Tribe; (2) Treaty of September 19, 1853 (10 Stat. 1027), with the Umpqua Tribe; (3) Treaty of November 18, 1854 (10 Stat. 1122), with the Chasta tribe, the Scotons tribe, and the Grave Creek band of Umpquas; (4) Treaty of November 29, 1854 (10 Stat. 1125), with "the confederated bands of the Umpqua tribe of Indians and of the Calapooias residing in Umpqua Valley"; (5) Treaty of January 22, 1855 (10 Stat. 1143), with "the confederated bands of Indians residing in the Willamette Valley"; and (6) Treaty of December 21, 1855 (12 Stat. 981), with the "Mo-lal-la-las, or Molel tribe of Indians."

None of the unratified treaties mentioned in finding 2, made in 1851, including those made in that year with the seven bands and tribes who were paid in full, as above-mentioned, and none of the above-mentioned six ratified treaties included, as ceded land, any of the land for which compensation is claimed in the petition herein by plaintiff tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos.

All the above-mentioned ratified treaties except the sixth had been made and ratified before the treaty of August 11, 1855, with which we are here concerned, was transmitted by

the President to the Senate and before the President issued the Executive Order of November 9, 1855, hereinafter
39 mentioned, conditionally creating the Coast Reservation in part out of certain lands involved in this case and ceded under the August 11, 1855 unratified treaty. The reservation was created, subject to future curtailment if the President should deem proper, for the Indian tribes and bands party to the 1855 treaty and other tribes and bands which the President might place upon said reservation.

As hereinafter mentioned, it appears that some of the Indians of some of the above-mentioned tribes and bands whose treaties were ratified were subsequently removed to and placed upon the reservation described in the Executive Order of November 9, 1855, notwithstanding the treaty of August 11, 1855 with the Indians, who claimed and held original Indian title to such lands had not been ratified, and such original Indian title had not been legally extinguished.

Gen. Palmer, assisted by the Government Indian agents, made investigations and reports as to the lands and areas thereof claimed, occupied, and used by plaintiff tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos, parties to the unratified treaty of August 11, 1855. Plaintiff tribes and bands, except those mentioned in finding 5, signed and accepted this treaty dated August 11, 1855 on August 11, August 17, August 23, August 30 and September 8, 1855; because of these different dates of signing by the different tribes, the jurisdictional act referred to the 1855 treaty as "treaties." So far as here material, the unratified treaty of August 11, 1855, was as follows:

> ARTICLE 1. The above-named confederated bands of Indians cede to the United States all their right, title, and interest to all and every part of the country claimed by them included in the following boundaries, to wit: Commencing in the middle of the channel of the Columbia River, at the northwestern extremity of the purchase made of the Calapooia and Molalla bands of Indians; thence running southerly with that boundary to the southwestern point of that purchase, and thence along the summit of the Coast Range of mountains with the western boundaries of the purchase made of the Umpquas and Molallas of the Umpqua Valley, and of the Scotons, Chastes, and Grave Creeks of Rogue River Valley, to the southern boundary of Oregon Territory; thence west to the Pacific Ocean, thence northerly

40 along said ocean to the middle of the northern channel of the Columbia River; thence following the middle of said channel to the place of beginning: *Provided, however*, That so much of the country described above as is contained in the following boundaries shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, and such other bands or parts of bands as may, by direction of the President of the United States, be located thereon.

Such tract for the purpose contemplated shall be held and regarded as an Indian reservation, to wit: Commencing where the northern boundary of the seventeenth range of townships south of the base line strikes the coast; thence east to the western boundary of the eighth range of townships west of the Willamette meridian, as indicated by John B. Preston's "Diagram of a portion of Oregon Territory;" thence north on that line to the southern boundary of the third range of townships south of the base line; thence west to the Pacific Ocean; and thence southerly along the coast to the place of beginning: *Provided, however*, That the district west of the said eighth range of townships, between the said northern boundary of range seventeen and the fourth standard parallel south, shall, for the term of twenty years, be held and regarded as a part of said Indian reservation, and together with the tract described by this section, as such, be subject to the laws regulating "trade and intercourse with Indian tribes" now in force, or hereafter enacted by the Congress of the United States. All of which tract shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use of such Indians as are, or may hereafter be, located thereon; nor shall any person other than an Indian be permitted to reside upon the same without the consent and permission of the Superintendent of Indian Affairs and the agent having charge of said district.

The said bands and tribes agree to remove to and settle upon the same within one year after the ratification of this convention without any additional expense to the Government other than is provided by this treaty; and until the expiration of the time specified the said bands shall be permitted to occupy and reside upon the tracts now possessed by them, guaranteeing to all white citizens the right to enter upon and occupy as settlers any lands not included in said reservation, or actually enclosed by said Indians; *Provided, however*, That, when the public interest or convenience may require, the
41 right of constructing roads, railroads, or other

public highways, and navigating the streams or bays in said reservation, is hereby secured to the United States; *And provided also*, That if any band or bands of Indians residing in and claiming any portion of the country herein described shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to receive such part of the several annuities and other payments hereinafter named as a consideration for the entire country described as aforesaid as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid as consideration and payment in full for the tracts in said country claimed by them; *And provided also*, That where substantial improvements have been made by individuals of bands becoming parties to this treaty which they shall be compelled to abandon in consequence of said treaty, the same shall be valued under direction of the President of the United States, and payment made said individuals therefor, or, in lieu thereof, improvements of an equal extent and value, at their option, shall be made on the tracts assigned to each respectively.

ARTICLE 2. In consideration of and payment for the country hereby ceded, the United States agree to pay to the bands and tribes of Indians claiming territory and residing in said country the several sums of money, to wit: Ten thousand dollars per annum for the first three years, commencing on or before the first day of September, 1857; eight thousand dollars per annum for the term of three years next succeeding the first three; six thousand dollars per annum for the term of three years next succeeding the second three, and three thousand dollars per annum for the term of six years next succeeding the third three.

All of which several sums of money shall be expended for the use and benefit of the confederated bands, under the direction of the President of the United States, who may from time to time, at his discretion, determine what proportion thereof shall be expended for such objects as, in his judgment, will promote their well-being and advance them in civilization; for their mutual improvement and education; for buildings, opening and fencing farms, breaking land, providing teams, stock, agricultural implements, seed, &c., for clothing, payment of mechanics and farmers, and for arms and ammunition.

ARTICLE 3. The United States agree to pay said Indians the additional sum of thirty thousand dollars, a portion whereof shall be applied to the payment for such articles as may be advanced them at the time of signing this treaty, and in providing,

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after the ratification thereof, and prior to their removal, such articles as may be deemed by the President essential to their wants; for the erection of buildings on the reservation, fencing and opening farms; for the purchase of teams, farming implements, tools, and seeds; for the payment of employes, and for subsisting the Indians the first year after their removal.

ARTICLE 4. In addition to the consideration specified, the United States agree to erect at suitable points on the reservation two sawmills, two flouring mills, four schoolhouses, and two blacksmith shops, to one of which shall be attached a tin shop; and for two sawyers, two millers, one superintendent of farming operations, three farmers, one physician, four school teachers, and two blacksmiths, a dwelling house and the necessary outbuildings for each; and to purchase and keep in repair, for the time specified for furnishing employes, all necessary mill fixtures, mechanical tools, medicines, books, and stationery for schools, and furniture for employes.

The United States further engage to secure and pay for the services and subsistence for the term of fifteen years, of three farmers, two blacksmiths, two sawyers, two millers; and for the term of twenty years, of one physician, one superintendent of farming operations, and four school teachers.

The United States also engage to retain in the service one Indian agent, and to erect at the most central suitable point agency buildings, where such agent shall reside.

ARTICLE 8. The confederated bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredations on the property of said citizens; and should any one or more of the Indians violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned; or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities; nor will they make war on any other tribe of Indians, except in self-defense, but submit all matters of difference between them and other Indians to the Government of the United States, or its agents, for decision, and abide thereby; and if any of the said Indians commit any depredations on other Indians, the same rule shall prevail
43 as that prescribed in the case of depredations against citizens.

ARTICLE 9. For the purpose of establishing uniformity of laws, rules, and regulations among the various bands of Indians being parties to this treaty, and to give greater security to person and property, it is hereby

agreed that the Congress of the United States, with the approval of the President, shall have power to enact laws for the government of said Indians.

ARTICLE 11. The United States agree to expend a sum of money, not exceeding ten thousand dollars, in opening and constructing wagon roads between the different settlements on said reservation, and from the saw and flouring mills herein provided for to said settlements; and in the event of a failure to effect secure landings for vessels in the transportation of annuity goods within said reservation, the additional sum, not exceeding ten thousand dollars, shall be expended by the United States in opening and constructing a wagon road from some point at or near the mouth of Ne-aches-na or Salmon River to the settlements in the Willamette Valley, and one wagon road from some navigable point on Yah-quo-nah or Alcea River to the valley of the Willamette.

ARTICLE 12. The United States engage to establish and maintain a military post on said reservation whensoever the peace and safety of the Indians residing thereon shall render the same necessary.

ARTICLE 13. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

4. Plaintiff tribes and bands (except the plaintiffs Chinook, Clatsop, and the Ne-ha-lum tribes, the Confederated tribes of the Grand Ronde Community, Oregon, so-named, Willamette Valley Confederated tribes of Indians, so-named, and the Siletz Confederated tribes, so-named) were parties signatory to the unratified treaty above set out and signed by the chiefs and headsmen of the tribes and bands as set out therein, respectively. The treaty was signed by Joel Palmer, duly authorized by the President of the United States on behalf of the Government of the United States. It was forwarded to the office of the Commissioner of Indian Affairs, Interior Department, by Superintendent Palmer on November 14, 1855, but was not transmitted by the
44 Commissioner of Indian Affairs to the Secretary of the Interior for submission to the President until February 5, 1857. The reason for this delay from November 14, 1855, to February 5, 1857, was that this treaty of August 11, 1855, with numerous other treaties negotiated and made with the various tribes and bands of Indians in Oregon, was received by the Commissioner of Indian Affairs during a recess

of Congress—which treaties were afterwards withheld by the Commissioner of Indian Affairs because of the hostile condition of the Government's relation with certain Indians in that country, which, however, was not caused by plaintiff Indians. Due to the intrusion and conduct of certain white settlers, and the resentment thereof by certain Indians, there were open hostilities with the Rogue River Indians, a great many of whom were exterminated. A great many of the other Rouge River bands of Indians were driven from their homes into the mountains, but after hostilities ceased they were rounded up and permanently placed upon the Coast Reservation, hereinafter mentioned, created in part out of the land claimed by plaintiff Tillamooks tribe. A great many of these Rogue River Indians died of disease contracted from exposure during this period. When various other treaties which had been negotiated, made, and executed by Anson Dart, Gen. Palmer, and others with various tribes and bands of Indians were finally sent by the Commissioner of Indian Affairs to the Secretary of the Interior, and, by him, to the President, who transmitted them to the Senate for ratification, the treaty of August 11, 1855 with certain plaintiff tribes and bands was accidentally and unintentionally overlooked and not sent along with the other treaties. Some of the treaties transmitted at that time for ratification appear to have been those made in 1853, 1854, and 1855, mentioned in clause (a) of the jurisdictional act, certain of which tied in with the Coast Reservation defined and sought to be created by art. 1 of the unratified treaty with certain plaintiff bands and tribes of August 11, 1855, and as described in the Executive Order of November 9, 1855, hereinafter referred to.

The 1855 treaty and the original papers, including the instructions to and the reports from Gen. Palmer as appear from the Journal of the Senate, were sent to the Senate by the President February 11, 1857; on February 18 the treaty was read and referred to the Committee on Indian Affairs. The treaty was not reported out by the committee and Congress adjourned shortly after the treaty was submitted; it was never acted upon by the Senate, as shown by Senate Executive Document No. 25, 53rd Cong., 1st sess., referred to in clause (b) of the jurisdictional act herein.

At the next session of Congress this treaty of August 11, 1855, and certain other treaties which had been negotiated and made in 1851, were not reported by the Indian Affairs' Committee to the Senate for consideration, apparently for the reasons hereinbefore mentioned, and these treaties were never thereafter acted upon by the Senate.

5. Prior to execution of the treaty of 1855, and after Joel Palmer became superintendent of Indian Affairs in Oregon, he was duly authorized and directed by the President to draft and negotiate treaties for the purpose of extinguishing the Indian title to lands in Oregon Territory, including the lands described in the unratified treaty of 1855, with certain of plaintiff tribes and bands. Palmer was notified of his appointment by the Commissioner of Indian Affairs August 12, 1854, and in the performance of such duties and functions, and by direction of the President, through the Bureau of Indian Affairs, it became and was his duty to investigate and ascertain the location of the several Indian tribes and bands who occupied and held possession of lands, the areas thereof and the nature and extent of such occupancy and use, and to secure the signatures of the tribes and bands of Indians who owned and occupied, the lands and held the original Indian title sought to be extinguished. This he did with care and thoroughness.

In the notice of his appointment, transmitted by the Commissioner of Indian Affairs, Gen. Palmer was advised that "You will furnish me with a skeleton map of Oregon Territory showing the location of the different tribes, with the extent of territory claimed by each and the nature or tenure of the claim and as treaties are made designate the reserve provided for Indian use with such precision that it may be laid down on the map here."

46 In further carrying out his instructions and duties Palmer made an extended trip, or trips, over the land described in the treaty of August 11, 1855, assisted by Oris Taylor and J. L. Parrish, Indian Agent, Port Orford District, and thus obtained the added store of information required by the Bureau of Indian Affairs. The Port Orford District, of which J. L. Parrish was the duly appointed Indian agent, was located on the coast of southern Oregon in the area of the lands occupied and held by the Indians of the

Coquille, the Too-too-to-ney, and the Chetco tribes. Gen. Palmer accumulated and submitted detailed data of the geographical location and names of the tribes and bands; and submitted definite boundaries of the lands of plaintiff tribes and bands of the Tillamooks, Too-too-to-neys, Coquilles and Chetcos who were parties to the treaty of August 11, 1855, in the form of a written report to the Commissioner of Indian Affairs, accompanied with a detailed report from J. L. Parrish, Indian agent, in which was set out the location of the various tribes and bands of Indians.

The Too-too-to-ney, the Chetco, and the Coquille tribes are described in the Palmer report as occupying "That part of Oregon south of the waters of Coos Bay and west of the Summit of the Coast Range of Mountains."

The Palmer report further stated:

> A detailed statement of Indian affairs in the Port Orford district will be found in the accompanying report of Agent Parrish. He enumerates twelve distinct bands, with an aggregate population of 1,311 souls, and includes them all in the Too-ton-ton [Too-too-to-ney] tribe. These bands, however, speak at least four distinct languages, and but few in each band can converse with those of another. Those grouped as one band often reside in several villages. These bands are scattered over a great extent of country—along the coast and along the streams from the California line to 20 miles north of the Coquille [region], and from the ocean to the summit of the Coast Range of mountains. I visited several bands in person, and directed Mr. Taylor to accompany and assist the agent [Parrish] in ascertaining the numbers of the remainder. Excepting the Chetcas [Chetcos] and Coquilles, I found these Indians at peace with the whites and among themselves. They are
> 47 willing the whites should occupy their lands, provided they are permitted to retain their fisheries, from which they mainly derive their subsistence.

The territory of plaintiff bands of Tillamooks is set out in the Palmer report as "The country along the coast from Umpqua river to the Ne-a-ches-na [river], a distance of about 120 miles, is occupied by five bands of the Tillamook[s] tribe."

6. Plaintiffs, the Tillamook, Coquille, Too-too-to-neys, and Chetco tribes and bands, parties to the unratified treaty of August 11, 1855, had exclusively occupied, held, and used

from time immemorial (as shown by the proof from as early as 1750) that part of the lands embraced and described in the unratified treaty of 1855, as hereinafter particularly described, lying south of the north line of the Coast Reservation, mentioned as a reserve for the Indians in the unratified treaty of August 11, 1855, and described in a subsequent Executive order of November 9, 1855. The plaintiff tribes and bands above-mentioned in this finding had immemorially, and long prior to the date of the unratified treaty of August 11, 1855, held original Indian title, claim and rights to, in, and upon the lands and appurtenances thereon within the boundaries as are hereinafter in findings 8, 9, and 10 specifically described and set forth.

7. The four bands of plaintiff Tillamooks tribe which lived south of Cape Lookout and the north line of the reservation described in the treaty were designated in the treaty as bands of Tillamooks, and signed such treaty without further designation. However, the four bands constituted a tribe all speaking the same language. They were sometimes called the Yacons or Southern Tillamooks, and they held and occupied the contiguous lands, as hereinafter described in finding 8.

The Coquille tribe of Indians was composed of bands as set out in the caption of the petition herein and in the treaty of 1855. These bands of Coquille Indians were designated as a tribe by the language of the treaty of August 11, 1855, preceding the signatures of their chiefs and headmen.

The Too-too-to-ney tribe of Indians was composed
48 of the bands as set out in the caption hereof, and were so designated in the language of the treaty of August 11, 1855, preceding the signatures of their chiefs and headmen.

The Chetco tribe was at all times considered as a part of the Too-too-to-ney tribe, but there was a slight difference in the language of the two tribes. They were designated in the report of Gen. Palmer as the Too-too-to-neys, referred to in the treaty as the "Chetco tribe," and, although signing the treaty in the column with the Too-too-to-ney bands, signed the treaty as "Chetco Tribe." This tribe occupied the tract of land which was contiguous to the lands of the Too-too-to-ney tribe, as hereinafter described and set forth.

8. The bands of plaintiff Tillamooks tribe, the bands of the Coquille tribe, and the bands of the Too-too-to-ney tribe, including the Chetco tribe, are sometimes, for convenience, referred to hereinafter as the Tillamooks, Coquilles, Too-too-to-neys, and the Chetcos, respectively. The land so exclusively occupied, held, and used by plaintiff bands of Tillamooks, and to which they held and owned the original title, claim and right, is described as follows:

Commencing at the mouth of the north ten mile creek about midway between the Alcea and Sieuslaw River, running thence east to the summit of the Coast Range of Mountains, thence north along said summit to a point due east from Cape Lookout, thence west to the Pacific Ocean at said Cape Lookout, thence in a southerly direction along said Pacific Coast line to the point of beginning.

The four different bands of Tillamooks occupied the land above described in this finding commencing from the south in the following order: the Alceas, the Yahquonahs, the Seletcas, and the Neachesnas (Nestuccas and Salmon River Indians). The northern boundary of the land so occupied by the Alcea Band of Tillamooks commences on the coast just north of Bay View and runs thence northeasterly along the watershed between the Alcea and Yaquina River to the summit of the Coast Range of mountains. The northern line of the territory occupied by the Yahquonahs commences at the coast just south of Cape Foulweather thence in an easterly direction along the line of the watershed between the Siletz and the Yaquina River to the Coast
49 Range of mountains. The northern boundary of the territory occupied by the Seletca Band of Tillamooks commences on the coast at a point five miles north of where the town of Taft now stands running thence in an easterly direction along the northerly watershed of the Siletz River to the summit of the Coast Range of mountains. The northern boundary of the territory occupied by the Neachesna Band of Tillamooks was the northerly line of the Coast Reservation as hereinafter set out.

9. The lands so exclusively occupied, held and used by the Too-too-to-neys, including the Chetco tribe, are described as follows: Starting at Four Mile Creek situated four miles south of the mouth of the Coquille River on the Pacific coast running east four miles, thence following along the

watershed between the south fork of the Coquille River and the headwaters of Flores River and Sixes River in a southeasterly direction to Illahe (town), situated in the Rogue River drainage, thence in a northeasterly direction along the divide between the headwaters of the south fork and middle fork of the Coquille River and the headwaters of tributaries of the Rogue River and of Cow Creek tributary of the Umpqua River to Camas Valley located at a point near the easterly boundary of the land described in the unratified treaty; thence in a southerly direction following the easterly line of said land described in the unratified treaty to the California state line; thence west to the Pacific Coast line; thence in a northerly direction along said coast line to the point of beginning.

The land in this finding above described as the territory occupied by the Chetco Tribe starts at the coast of Cape Sebastian and runs thence in an easterly direction in a meandering line following the watershed which separates Hunters Creek and Pistol River, thence around the headwaters of Chetco River in a southeasterly direction where it intersects the boundary line with California at a point about 123°50′ west longitude. These boundary lines other than the northerly line of the plaintiff Tillamooks' territory are and were as shown on the map showing tribal distribution accompanying the report of John P. Harrington, being plaintiffs' exhibit 2, which map so far as it furnishes the lines described in these findings is made a part hereof by reference.

10. The land so exclusively occupied, held and used by the Coquilles is described as follows: All that land lying between the easterly and westerly boundary of the land described in the unratified treaty lying between the northerly line of the land hereinbefore described as belonging to said Too-too-to-neys and a line commencing at Cut Creek or Whiskey Run about three miles north of the mouth of the Coquille River, thence in a northeasterly direction following the divide between South Slough, Island Slough, and Sumner Slough, on the north, and the drainage of the lower Coquille River on the south, thence along the divide between the south fork of Coos River on the north and the Drainage of upper Coquille River on the south in a southeasterly direc-

tion to the east line of the land described in the unratified treaty, at Camas Valley.

11. The Indian tribes and bands above-mentioned occupied more or less accurately described areas of land with clearly defined boundaries, and lived principally along rivers and creek banks bearing the same name as the tribe living along its banks. Generally, they appear to have taken their tribal designations from, or to have been given the names of certain streams along which they lived, or the streams were named for the Indian tribes.

The above-described lands which were ceded, including a portion of the total area which was designated by the unratified treaty of August 11, 1855, as a residence for Indians, were in the exclusive possession and use of plaintiffs Tillamooks, Too-too-to-ney, Coquille, and the Chetco bands and tribes, parties to this unratified treaty.

12. Plaintiffs Tillamooks, Too-too-to-ney, Chetco, and Coquille bands and tribes gave up their original Indian title to their lands in accordance with the conditional promises made by them in the unratified treaty of 1855 and went upon or were removed by the Government to the area mentioned in the treaty as a residence, described as a conditional reservation by the Executive Order of November 9, 1855, and later known as the Coast Reservation. This reservation, as described in the unratified treaty, and which was
51 approximately that described in the Executive Order of November 9, was composed in part of a portion of the lands exclusively used, held, and occupied under original Indian title by the plaintiff bands of Indians composing the Tillamooks tribe. A part of the reservation at its south end appears to have included some of the lands claimed by the Coos Bay, Umpqua, or Siuslaw tribes.

This reservation was later reduced or diminished, as hereinafter mentioned, by an Executive Order of December 21, 1865, and, further, by acts of Congress of March 3, 1875, 18 Stat. 420, 446, and May 13, 1910, 36 Stat. 367.

The Tillamook, Too-too-to-ney, Chetco, and Coquille bands and tribes, plaintiffs herein, have never received any compensation for the lands to which they had original Indian title, hereinbefore mentioned in findings 8, 9, and 10, or the lands taken from the reservation and restored to the

public domain by reduction of the Coast or Siletz Reservation by Executive Order of 1865 and the act of Congress of 1875, except to the extent that the Indians of the Tillamook, Too-too-to-ney, Coquille, and Chetco tribes benefited with respect to land to which the Tillamooks had original Indian title under the allotment act of February 8, 1887 (24 Stat. 388), the agreement of October 31, 1892 (28 Stat. 286, 323), the act of May 31, 1900 (31 Stat. 221, 223), and the act of May 18, 1916 (39 Stat. 123, 149).

Protests of the failure of the United States to ratify the treaty of August 11, 1855, were continuously made by the Indian tribes and bands, parties thereto, by the Government's Indian superintendents and agents and the Commissioner of Indian Affairs in his annual reports, in practically all reports up to and including 1869, and such protests continued thereafter at various times until the jurisdictional act herein was enacted.

13. The reservation herein known as the Coast or Siletz Reservation as originally described in the 1855 treaty and, for the most part, within the boundaries of the land to which plaintiff Tillamooks tribe and bands had original Indian title, was conditionally recommended and created during the period April 17 to November 9, 1855, under the circumstances and for the purposes shown below.

52 On April 17, before the unratified treaty dated August 11, 1855, was negotiated, Indian Superintendent Joel Palmer wrote the Commissioner of Indian Affairs as follows:

> Believing that the welfare of the Indians on the coast and in the Umpqua and Willamette valleys would be promoted and the policy of the Government more effectively carried out by designating without delay an Indian reserve on the coast, I have caused the inclosed notice to be published in the several newspapers of this Territory.
>
> I have been impelled to this step by learning that many persons contemplate soon to commence settlements in several small valleys of the designated district, and from the reluctance of the coast Indians to remove to the interior, a measure which I believe would be disastrous to them as a people, and attended with enormous expense to the Government.
>
> Being satisfied that no other section, offering so few attractions to the whites, combine more facilities for the

comfort and subsistence of the Indians, I have selected this tract and recommend that it be made a permanent Indian reserve.

Should the Indians of the Willamette and Umpqua valleys be removed east of the Cascade Mountains this reserve may be curtailed, but should they be located thereon the entire tract will be required.

This portion of the Territory has not yet been purchased, but this will probably be effected during this summer, and the entire Indian population of the coast confederated.

I had contemplated visiting the coast bands this spring but owing to the nonreception of funds, and the state of affairs in middle Oregon, I have deemed it best to postpone my trip to the coast until my return from the interior.

I will, if possible, effect a treaty of purchase with those Indians during the summer.

April 18, Superintendent Palmer again wrote the Commissioner of Indian Affairs as follows:

I send by to-day's mail a tin case containing a map of Oregon Territory, which I have had executed. This map, of course, is not presumed to be accurate in all respects, but it approximates as near to correctness as the means in our possession would permit.

The portions within the limits of the actual surveys may be regarded as accurate. Mr. Belden, the pro-
53 jector, having access to all the plats of survey in the office of the Surveyor-General. Other portions are in accordance with the most reliable information, but actual surveys may prove many inaccuracies.

I have delineated on the map the boundary of the proposed reserve on the coast, north of the Umpqua River, designed for the Indians of the entire seaboard of Oregon, those of this valley, and perhaps of Umpqua Valley.

June 29, the Commissioner of Indian Affairs wrote Palmer as follows:

I received on the 25th ultimo your letters of the 17th and 18th of April last, the first enclosing a copy of a notice designed to prevent settlement by whites on lands which you have thought proper to select as an Indian reservation on the coast of Oregon, and the latter stating that you had forwarded by the same mail a tin case containing a map of Oregon, with the reservation alluded to designated thereon.

The office would have given earlier attention to this subject but for the fact that it has waited the arrival

of each successive mail since the letters came to hand in the hope of receiving the map referred to, but as it has not yet arrived the presumption is that it has been mislaid or lost.

As your report is not of a character to give full information as to the locality of the reserve in the absence of the map, I have deemed it best, in view of the importance of the subject and to secure an early arrangement of the matter if found practicable, thus early to advise you of the nonarrival of said map that you may send me a duplicate of the same.

The precaution taken by you in giving public notice of the selection of the reserve to prohibit settlement by whites thereon is approved.

It is desirable that you furnish some further data concerning the land selected, as well as to the character of the country and soil and its extent, if it is in your power to do so.

As soon as you shall do so, and the map arrives here, some conclusion upon the proposition will be arrived at and communicated to you. But on the receipt of this you will inform the land officers of the district, within which the proposed reservation lies, of its boundaries, that they may be able to recognize the plat, and in their official capacity respect the same, as the Commissioner of the General Land Office has been requested to instruct them to do.

54 On the same date the Commissioner of Indian Affairs wrote the Commissioner of the General Land Office as follows:

The superintendent of Indian affairs of Oregon, under dates of 17th and 18th of April last, advised this office of the selection on the coast of Oregon of a district of country for an Indian reservation. In that of the 17th of April was inclosed a copy of a public notice stated to have been published in the several newspapers in the Territory, giving information that said "reservation will not be subject to settlement by whites." That of the 18th informed this office that a map inclosed in a tin case was forwarded by the same mail, the outlines of the country designated as the reserve being marked on this map.

I have waited until this time without calling attention to the subject in the hope that the map would arrive by some of the recent mails, but it has not yet come to hand; so with a view, as far as practicable, to secure respect to the notice given by the superintendent, I inclose to you herewith a transcript of the copy received here, and request that so far as the same is within the

power of the officers of your department, that they be instructed officially to respect the same in view of this request.

Supt. Palmer has this day been directed to inform the proper land officers of the district where the land lies, what are its boundaries. As soon as a duplicate of the map, which has been sent for, shall arrive, with such data as will enable this Department to fix by definite metes and bounds the country designated, should it be deemed proper to withhold the same for the exclusive occupancy of the Indians of that section of the country, your office will be advised. In the meantime it is desirable that no settlements by whites be authorized to be made thereon by or under the authority of the Government.

July 31, the Commissioner of Indian Affairs wrote Superintendent Palmer as follows:

Referring to my letter to you of the 29th ultimo, stating that a map of an Indian reserve on the coast of Oregon, previously represented by you to have been sent to this office, had not been received, and requesting duplicate to be sent here, I have now to inform you that said map was received by the last mail from the Pacific and it will therefore not be necessary to send the duplicate referred to.

The subject referred to in your communication transmitting this map will be considered and the conclusions of the Department thereon will be duly communicated to you at an early day.

September 3, the Commissioner of the General Land Office wrote the Commissioner of Indian Affairs as follows:

Your communication of the 29th of June last, and its inclosure relative to a proposed reservation for Indians on the Pacific coast, Oregon Territory, and promising a map of the same, which had not yet reached your office, has been necessarily held up for want of said map and in consequence of not being able from the description to identify the southern boundary of the reserve on any of the maps in this office. I will thank you to transmit the map, if it has since been received, in order that the action of this office may be consummated by procuring the order of the President for the reservation and issuing the necessary instructions.

September 6 the Commissioner of Indian Affairs replied to the above letter as follows:

Agreeably to the request contained in your letter of the 3d instant, I transmit herewith the map showing the

locality of certain Indians in Oregon and the proposed reservation upon the Pacific coast, referred to in my letter to your office of 28th June last.

This map was received here several days since and it was in contemplation to furnish your office with a copy, but owing to the illness of the gentleman who executes the drafting for this office it has been delayed. I have, therefore, to suggest that a copy be made as early as convenient for the use of your office and that the original be returned here.

September 10, the Commissioner of the General Land Office sent the following letter to the Secretary of the Interior recommending the conditional creation of a proposed reservation for Indian purposes, as had been recommended by Gen. Palmer and as subsequently substantially set forth by him in the proposed treaty dated August 11, 1855:

I have the honor to submit herewith two letters from the Acting Commissioner of Indian Affairs of the 29th June last and the 6th instant, recommending a
56 large reservation of land, for the Coast, Umpqua, and Willamette Tribes of Indians in Or Territory, as shown by the *blue* shaded lines and the enclosed diagram, marked A, taken from the general map received with the Acting Commissioner's letter of the 6th instant and embracing, as will be seen, about 100 miles of the Pacific coast from "Cape Look Out" to a point midway between the Umpqua and Siuslaw (Sciiticom) rivers, by an average depth of 20 miles.

Previous to issuing the instructions requested by the Acting Commissioner, I respectfully recommend that the order of the President be first obtained for the proposed reservation.

Prior to the writing of this letter of September 10, 1855, treaties had been negotiated and signed in 1853, 1854, and 1855, and duly ratified by the Senate with the bands of Indians of the Rogue River tribe, the Chastas, the Scotons (which were Coast Indians), the Confederated Bands of the Umpqua tribe and the Confederated Bands of Indians in the Willamette Valley known as the Willamette tribes (see finding 3). The ratified treaties with these tribes provided that they would be given permanent homes, care, and protection, and various other things were promised to the tribes on a permanent reservation for their permanent homes; one of these treaties mentioned such permanent

home as the Coast Reservation described in the unratified treaty of August 11, 1855, with certain of plaintiff tribes.

Upon receipt of the above-quoted letter of September 10, the Secretary of the Interior wrote the Commissioner of Indian Affairs for a full report on the matter, and as to the authority for the proposed reservation. October 29, the Commissioner of Indian Affairs replied and, so far as here material, stated as follows:

> I have the honor to acknowledge the receipt here, by reference from your Department, of the letter of the Commissioner of the General Land Office of the 10th ultimo, inclosing letters from this to that office of the 29th June last and 6th ultimo, respectively, with a map showing the tract of country that has been reported here as suitable for the location of the Indians on the Pacific coast for "a report as to the authority for the reservation in question."
>
> 57 Under the act of 5th June, 1850, specific authority was given by law for the holding of treaties in Oregon, looking then to the purchase of the Indian title to the lands west and the removal of the Indians toward the interior, east of the Cascade Mountains. An appropriation of $68,000 was also made in the Indian appropriation act of July 31, 1854, "for the expenses of negotiating treaties with and making presents of goods and provisions to, the Indian tribes in the Territory of Oregon."
>
> By the same act, an item of $5,000 was appropriated to pay for the treaties made in 1853 with the Rogue River and Cow Creek band of Umpqua Indians. * * *.
>
> As Congress is not now in session nor as yet are the reports of the Superintendent of Indian Affairs in Oregon so full as is desired to enable the office to make a final report upon the proposition, it was deemed proper that for the time being, and, until the subject could be more fully considered, the tract of country selected by the superintendent should be withheld from settlement. It is believed that this course does not conflict with the uniform policy of the Government, and is in keeping with that pursued in the case of the treaties in Oregon already ratified.
>
> * * * * *
>
> On the 29th of June, upwards of a month after the reception of the letter from the superintendent recommending the reservation, and near a month anterior to the receipt of the map, in view of frequent casualties causing delay in the transmission of mail matter, and presuming Supt. Palmer would feel some concern as to

the result of his recommendation, the Acting Commissioner of this Office advised him of the receipt of his letter and the nonarrival of the map and asked a duplicate of the latter. As will be seen by the copy of that letter, herewith, the preliminary steps taken by the superintendent were approved, but the definitive action to be taken under the direction of the Department of the Interior and the President of the United States, was necessarily postponed, because his report, in the absence of the map, was not of a character to give such full information as to enable this office properly to present the case for your consideration and that of the President. It was, therefore, deemed best to ask "Further data concerning the land selected, as well as to the character of the country and soil, as to its extent," etc. On the receipt of which he was informed that
58 "Some conclusion upon the proposition would be arrived at and communicated to him."

From a letter from Supt. Palmer of the 24th of July last, received here on the 11th ultimo, an extract from which is also herewith, it appears that very great embarrassment must result to the service because this subject has not been determined. As, therefore, the policy of concentrating the Indians upon one or more reservations is that already adopted in the State of California by act of Congress, and I know no reason why the recommendation made by the superintendent is not the best. In view of all the surrounding circumstances, that can be devised, I respectfully recommend that the tract of land designated on the accompanying map from the General Land Office as that "proposed for Coast and Umpqua and Willamette Indians," be reserved from sale or settlement and set apart for Indian purposes, subject, however, to such curtailment in dimensions as treaties hereafter to be made and ratified and a better knowledge of the requirements of the Indians may admit, under the direction of Congress. It is only by some such action that the salutary provisions for treating with the Indians of Oregon for a cession of their lands to the United States, and their consequent concentration at any point can be carried into effect without the delay of further legislation, if not war and bloodshed.

* * * * *

After receipt and consideration of the above quoted letter of October 29, the Secretary of the Interior on November 8, 1855, wrote a letter to the President submitting this proposed

conditional reservation to him for approval. This letter of the Secretary was as follows:

> I herewith submit for your approval a proposed reservation for Indians on the coast of Oregon Territory recommended by the Commissioner of Indian Affairs and submitted to the Department by the Commissioner of the General Land Office for the procurement of your order on subject, in letter of the 10th September last.
>
> Before submitting the matter to you I desired to have a full report of the subject from the Indian Office; and the letter of the head of that Bureau, of the 29th ultimo, having been received and considered, I see no objection to the conditional reservation asked for "subject to future curtailment, if found proper," or entire relief thereof, should Congress not sanction the object rendering
> 59 this withdrawal of the land from white settlement at this time advisable. A plat marked A, and indicating the boundaries of the reservation, accompanies the papers, and has prepared thereon the necessary order for your signature should you think fit to sanction the reservation.

Thereupon the President issued an Executive Order of November 9, 1855, as follows:

> The reservation of the land within the blue shaded lines is hereby made for the purposes indicated in the letter of the Commissioner of the General Land Office of the 10th September last and letter of the Secretary of the Interior of the 8th November 1855.
>
> (Sgd.) FRANKLIN PIERCE.

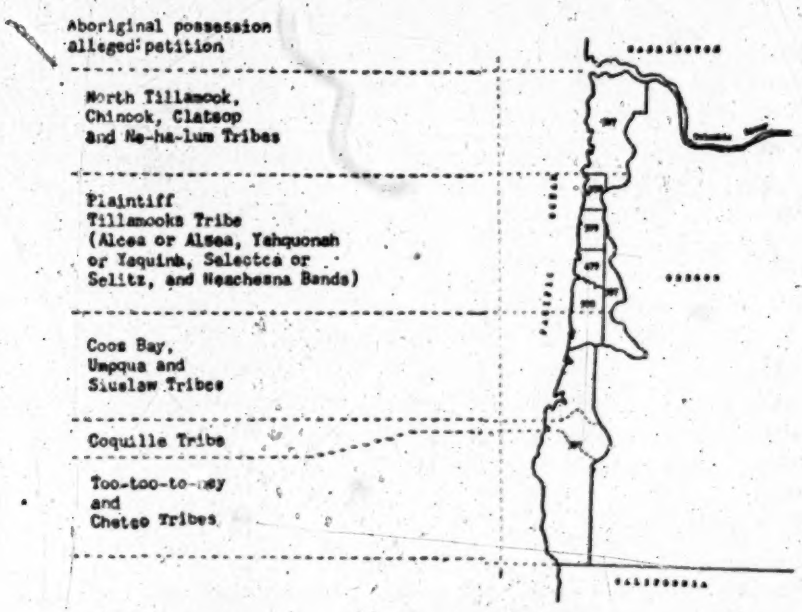
14. The particular description of the said reservation within the "blue shaded lines" referred to in the Executive Order of November 9 is as follows:

> Beginning on the shore of the Pacific ocean at the mouth of a small stream (Tsiltcoos river), about midway between Umpqua and Siuslaw rivers; thence easterly to the ridge dividing the waters of these streams, and along said ridge or highland to the western boundary of the eighth range of township W. of the Willamette meridian; thence N. on said boundary to a point due E. of Cape Lookout; thence W. to the ocean; and thence along the coast to the place of beginning.

15. The map which accompanied the letter of the Secretary of Interior and the Executive Order of November 9, 1855, showed the reservation to be, as indicated by the General Land

Office, for the "Coast, Umpqua and Willamette tribes." This Coast Reservation, later known also as the Siletz Reservation, consisted of a long strip of land about 120 miles north and south by 20 miles east and west, containing about 1,100,000 acres between the summit of the Coast Range of mountains and the Oregon coast, lying immediately south of Cape Lookout and marked on plate 51 of a map in Royce's Indian Land Cessions of the United States (18th Annual Report of the Bureau of American Ethnology) as parcels 578, 579, 479, and 578 (repeated for a lower tract), which descriptions are shown on the sketch reproduced here, which sketch also shows within the dotted lines the approximate areas within which the tribes mentioned therein lived.

60



16. The boundaries particularly set forth in finding 14, which were those designated in the Executive Order of November 9, were approximately those of the reservation set out in the unratified treaty of August 11, 1855. Congress acquiesced in and ratified the Executive Order of November 9, 1855, as only conditionally withdrawing the land from public settlement by the passage of the act of March 3, 1875 (18 Stat. 420, 446), hereinafter referred to.

17. The land to which plaintiff Tillamooks tribe owned and held original Indian title as hereinbefore described, and as approximately indicated on the above sketch, lay for the most part within the confines of the original Coast Reservation, and such land of this tribe as was within such reservation was taken on November 9, 1855, in part by defendant from the Tillamook tribe for the benefit of other tribes and bands and in part for the benefit of the United States as and when it might desire to use it for public purposes, by virtue of the Executive Order of November 9, 1855, ratified by Congress. The land of the Tillamook tribe, as hereinbefore described in finding 8, as lay outside the boundaries of said Coast Reservation was taken by defend-
61 ant from said Tillamooks on November 9, 1855, or soon thereafter, as were the lands of the Coquille, Too-too-to-ney, and the Chetco tribes when these four tribes were moved off their lands in 1855, at or about the date of the Executive Order of November 9 creating the Coast Reservation described therein.

18. The land of plaintiff Tillamooks tribe outside the Coast Reservation and all the lands of the Coquille, Too-too-to-ney, and Chetco tribes were taken by inducing and coercing the Indians of these tribes to move from their lands, to which they held original Indian use and occupancy title, to the Coast Reservation upon the promise that the treaty of August 11, 1855, would be ratified and the terms thereof carried out by the United States—which was not done.

The lands formerly held and occupied by plaintiffs Tillamooks, Coquille, Too-too-to-ney, and the Chetco tribes, exclusive of the portion of land of the Tillamooks included in the Coast Reservation, were immediately opened to homestead entry and settlement as public lands of the United States, which action was known to, acquiesced in, and subsequently ratified by Congress; the lands originally within the reservation under the unratified treaty and the Executive Order of November 9, 1855, which were later excluded by the Executive Order of December 21, 1865, and the act of Congress of March 3, 1875, were disposed of as public lands immediately upon the taking effect of such Executive Order and statute.

19. After the treaty of August 11, 1855, had been signed by Gen. Palmer on behalf of the United States and by the

chiefs and headmen of the Indian tribes and bands, parties thereto, and without awaiting ratification thereof, the United States dispossessed the Indians of the Coquille, Too-too-to-ney, and Chetco tribes; and in part the Tillamooks, all parties to the treaty, of their lands, and without the consent of the Indian tribes mentioned and against their will, independently of the conditional consent expressed by them in unratified treaty of August 11, 1855, and without compensation then or later, and appropriated such lands for the use and benefit of the United States.

62 20. Failure to ratify the treaty of August 11, 1855, left the recognized original Indian title, which the United States took without making compensation, in the Tillamook, Coquille, Too-too-to-ney, and Chetco tribes; and left the United States without legal or equitable rights, under principles applicable to the recognized aboriginal Indian use and occupancy title, to take and treat the lands, exclusively held and possessed by the particular tribes, as public lands without payment of just compensation.

21. On December 20, 1865, the Secretary of the Interior recommended to the President that an Executive Order be made releasing or withdrawing from the Coast Reservation theretofore "set apart conditionally" and restoring to public use that portion of such Coast Reservation, as follows:

> * * * Commencing at a point 2 miles south of the Siletz Agency; thence west to the Pacific Ocean; thence south along said ocean to the mouth of the Alsea River; thence up said river to the eastern boundary of the reservation; thence north along said eastern boundary to a point due east of the place of beginning; thence west to the place of beginning.

Thereupon an Executive Order was issued as follows:

> EXECUTIVE MANSION,
> *December 21, 1865.*
>
> The recommendation of the Secretary of the Interior is approved, and the tract of land within described will be released from reservation and thrown open to occupancy and use by the citizens as other public land.
>
> (Sgd.) ANDREW JOHNSON,
> *President.*

The land described in this Executive Order was withdrawn from the reservation without consent of the Indians

and without compensation as a result of insistent demands made by white settlers. The land so withdrawn consisted of a strip from the coast to the eastern boundary of the reservation which is designated as parcel #479 on the sketch hereinbefore reproduced in finding 15. This tract was about twenty-five miles north and south by twenty miles east and west. Plaintiff Tillamook tribe originally owned and exclusively held original Indian use and occu-
63 pancy title to the area so taken from the reservation, which was, by the Executive Order in 1865, immediately opened for public settlement.

This Executive Order separated the Coast Reservation into two parts and, thereafter, the north portion was known as the Siletz Reservation and the south portion as the Alcea Reservation. From time to time prior to the Executive Order in 1865 the Superintendent of Indian Affairs, of Oregon, had made various reports with reference to the proposed reduction of the Coast Reservation by withdrawing therefrom the strip of land in question for the benefit of white settlers, and in these reports he urged that, if this should be done, sufficient time should be given him to move the Indians off the area to be withdrawn from the reservation, and insisted that if it was done proper arrangements be first made with the Indians to compensate them therefor. Neither request of Superintendent Palmer was granted. The tract of land covered by the Executive Order was opened for public use and settlement before the Indian tribes and bands thereon were moved. The Indians were subsequently moved to other portions of the diminished reservation.

22. By an act of March 3, 1875 (18 Stat. 420, 446), Congress ratified the objects and purposes set forth in the above-quoted Executive Orders of November 9, 1855, and December 21, 1865, and the actions which had been taken thereunder, and, by that act, the remainder of the Coast Reservation was further modified or diminished as follows:

> And the Secretary of the Interior be, and hereby is, authorized to remove all bands of Indians now located upon the Alsea and Siletz Indian reservation, set apart for them by Executive order dated November ninth, eighteen hundred and fifty-five, and restored to the public domain by Executive order of December twenty-first, eighteen hundred and sixty-five, and to locate said

Indians upon the following described tract of country, namely: Beginning at a point two miles south of the Siletz agency; thence west to the Pacific Ocean; thence north, along said ocean, to the mouth of Salmon River; thence due east to the western boundary of the eighth range of township west of the Willamette meridian; thence south with said boundary to a point due east of the place of beginning; thence west to the place of beginning; which is hereby set apart as a permanent reservation for the Indians now occupying the same and to be hereafter located thereon; and all the balance of said Alsea and Siletz reservations is hereby thrown open to settlement under the land laws of the United States: *Provided*, That these Indians shall not be removed from their present reservation without their consent previously had.

64

The land described in the above-quoted statute as the diminished reservation was parcel 579 shown on the sketch reproduced in finding 15; the effect of the act was to withdraw from the reservation without the consent of the Indians and without compensation the two parcels shown on said sketch numbered 578 at the north and at the south ends of the reservation. Plaintiff Tillamooks bands origimally jointly held the original Indian title to north parcel 578 and all or a portion of south parcel 578. These tracts of land were, upon enactment of the act of March 3, 1875, immediately opened for public settlement and occupancy before the Indians thereon were removed to the diminished reservation. The withdrawal of the above-described lands in parcels numbered 578 from the Executive Order reservation was not conditioned upon the consent of the Indian tribes or bands thereon. The consent of the Indians to their removal from the two tracts numbered 578, upon which they were residing, to the diminished reservation was finally obtained about September 16, 1875, or thereafter, and they were removed by the Government to the diminished reservation about October 28, 1875. The names of the Indian tribes or bands so removed are not shown but they appear to have been the Alcea, the Coos Bay, the Umpqua, and the Siuslaw.

23. The general allotment act of February 8, 1887, 24 Stat. 388, provided for allotment of lands in severalty to Indians of various existing reservations if the President deemed such allotments advantageous for agricultural and

grazing purposes. In pursuance of this act certain allotments were made to Indians permanently located, at that time, on the diminished Siletz Reservation, as described in the act of March 3, 1875, *supra*.

65 On October 31, 1892, a certain agreement was negotiated and made pursuant to an act of July 13, 1892, 27 Stat. 120, 137, between commissioners on the part of the United States, and the chiefs, headmen, and other male adults of the Alcea and other Indians, not identified by the record, residing on the Siletz Reservation, which agreement is set out in full in sec. 15 of the act of August 15, 1894, 28 Stat. 286, 323. This act accepted, ratified, and confirmed the agreement which, in substance, ceded 178,840 acres of land within the diminished reservation as it then existed to the United States for $142,600, which was all the unallotted lands on the then existing reservation with the exception of five sections. This amount was, under the terms of the agreement, to be paid by the United States in the manner therein provided, namely: $100,000 to be deposited in the Treasury to the credit of various tribes and bands of Indians on the reservation at 5 percent interest, and the balance of $42,600 to be paid in cash to the various Indians concerned. May 16, 1895, by Presidential proclamation, the 178,840 acres of land so ceded were opened for public settlement pursuant to and in accordance with the act of Congress which ratified the agreement of October 31, 1892. The lands so ceded were embraced within and constituted a part of parcel 579 shown in the sketch reproduced in finding 15, with the exception of the five sections mentioned in the agreement.

24. By the act of May 31, 1900, 31 Stat. 221, 233, provision was made for payment of the balance of $100,000 mentioned in the preceding finding, which had been deposited at 5 percent interest to the credit of the Indians, directly to certain Indians on the diminished reservation mentioned who came within the requirements of that statute.

25. By the act of May 13, 1910, 36 Stat. 367, Congress gave the Government permission to dispose of the five sections of land reserved in the above-mentioned agreement of October 31, 1892. This act directed that the proceeds be used to reimburse the United States for expenses incurred in carrying out provisions of the act and for certain school

buildings, with their equipment and maintenance, and no part of the money was by that act to be paid directly to the Indians.

66 **26.** By the act of May 18, 1916, 39 Stat. 123, 149, Congress amended the act of May 13, 1910, so as to provide that the amount of money remaining after reimbursement of the United States for its expenses be paid share and share alike to the enrolled members of the Indian tribes on the Siletz Reservation.

27. The Siletz Confederated Tribes of Indians and the Willamette Valley Confederated Tribes of Indians, included as parties plaintiff in the petition, are composed of certain members of various bands or tribes not named in the record, and are sometimes so designated. The Confederated tribes of the Grand Ronde Community, Oregon (not otherwise identified), made plaintiffs in the petition herein, had organized by the Constitution under sec. 16 of the act of June 18, 1934, 48 Stat. 984, 987, and, as so organized, were authorized by such act to bring and prosecute authorized actions at law. The rights of these confederated tribes, such as they may be, are limited as representative of, for, and on behalf of the tribes, bands, and their descendants from which they were organized.

The Indians composing the above-mentioned three confederated tribes appear to be descendants of Indians who were members of certain tribes or bands not parties to the unratified treaty of August 11, 1855, or not otherwise entitled to sue under the jurisdictional act.

28. The predecessor tribes and bands of the Siletz Confederated Tribes of Indians were placed on the Coast Reservation.

The Willamette Confederated Tribes of Indians were not placed on the Coast Reservation.

The proof does not show that the Indians composing "The Confederated Tribes of the Grand Ronde Community, Oregon," were placed on the Coast Reservation, nor from what predecessor tribes or bands they were organized.

The last two above-mentioned Confederated tribes appear to have been Indians placed on the "Grand Ronde Reservation," which was not a part of the "Coast Reservation" but was a temporary reservation embraced in townships 5 and 6 south, of range 8 west, and parts of townships 5 and 6 south,

of range 7 west, Willamette District, Oregon, created
67 "for Indian purposes until otherwise ordered" by Executive Order of the President of June 30, 1857, for the colonization of Indian tribes in Oregon,—particularly for the Confederated Willamette Valley tribes, including the Calapoosia and Molel tribes, all parties to ratified treaties dated November 29, 1854, January 22, 1855, and December 21, 1855.

29. Plaintiffs Chinook, Clatsop, and the Ne-ha-lum tribes were placed on the Coast Reservation, but they were not parties to the unratified treaty of August 11, 1855 mentioned in clause (b) of the jurisdictional act (see finding 2). However they were parties to certain unratified treaties made in 1851 which attempted to cede certain lands lying north of the north boundary of the lands held and occupied by plaintiff Tillamooks tribe and north of the north boundary line of the Coast Reservation described in the treaty of August 11, 1855, and the Executive Order of November 9, 1855, which land, so mentioned in the treaty with them in 1851, was included in the description of the total area of land set out in the unratified treaty of August 11, 1855, as being ceded to the United States. These lands lay between the north line of said Coast Reservation, as originally defined, and the Columbia River. The dates of such 1851 unratified treaties made with these tribes by Anson Dart, and the description of the territory conditionally ceded therein were as follows:

The unratified treaty of August 5, 1851, with the Clatsop Tribe ceded by Article 1 all their land described therein as: Beginning at the western extremity of Point Adams, at the mouth of the Columbia River and running thence southerly, along the coast of the Pacific Ocean, to the mouth of a certain stream, south of what is called Tillamook Head, which stream is called by the Indians "Yock-les-reh-ta," thence easterly up and along said stream to its source; thence east to the summit of the Coast Range of Mountains; thence northerly to the Swalla-lockas, or Saddle Mountain; thence Northwesterly to the head waters of the Neetle or Lewis and Clark's River; thence down and along said river to Young's Bay; thence westerly along the shore of said bay, and the southern shore of the Columbia River to the place of beginning.

68 The unratified treaty of August 9, 1851, with the Kathlamet Band of Chinooks ceded by Article 1 all their lands described as: Beginning at point of land on Young's Bay called Ah-pin-pin running thence northerly and easterly following the southern shore of the Columbia River up to Hunt Mill; thence south on the west line of lands of the Konnaack band of Chinooks to the northern boundary of lands of the Klatakania Band of Chinooks; thence westerly following said northern boundary, and the northern boundary of lands formerly claimed by the Nuc-que-clah-we-muck Band of Indians. Also all the islands in the Columbia River opposite the above-described lands.

The unratified treaty of August 6, 1851, with the Nehalum Tribe (Naalem) ceded the territory lying between the southerly boundary line of the Clatsop tract above described and the northerly boundary line of the tract of land ceded in the unratified treaty of 1851 by the "Tillamook," or North Tillamook, Tribe, which is the northerly line of said Coast Reservation.

30. By the act of June ~~7~~, 1897 (30 Stat. 62), Congress made an appropriation for full settlement of claims under the unratified treaty of August 6, 1851 with the Naalem (which was the Ne-ha-lum tribe, a party plaintiff herein) band of the North Tillamook tribe, as follows:

> That there be paid to the Naalem band of the Tillamook tribe of Indians, of Oregon, the sum of ten thousand five hundred dollars, to be apportioned among those now living and the heirs of those who may be dead, by the Secretary of the Interior, as their respective rights may appear and that for this purpose there be appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of ten thousand five hundred dollars: *Provided*, That said Indians shall accept said sum in full of all demands or claims against the United States for the lands described in an agreement made with them dated the sixth day of August, eighteen hundred and fifty-one.

31. The act of Congress of August 24, 1912, (37 Stat. 518, 335), made the following provision for full settlement and satisfaction of claims arising out of certain unratified
69 treaties, mentioned in the act, negotiated and made in 1851 with the Tillamook, Clatsop, Chinook, and Nuc-quee-clah-we-muck tribes, as follows:

That there be paid to the Tillamook Tribe of Indians of Oregon the sum of ten thousand five hundred dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear; that there be paid to the Clatsop Tribe of Indians of Oregon the sum of fifteen thousand dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear; that there be paid to the Nuc-quee-clah-we-muck Tribe of Indians of Oregon the sum of one thousand five hundred dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear; that there be paid to the Kathlamet Band of Chinook Indians of Oregon the sum of seven thousand dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear; that there be paid to the Waukikum Band of Chinook Indians of Washington the sum of seven thousand dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear; that there be paid to the Wheelappa Band of Chinook Indians of Washington the sum of five thousand dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear; and that there be paid to the Lower Band of Chinook Indians of Washington the sum of twenty thousand dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear, and for this purpose there be, and is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of sixty-six thousand dollars: *Provided*, That said Indians shall accept said sum, or their respective portions thereof, in full satisfaction of all demands or claims against the United States for the lands described in the agreements or unratified treaties between the United States and
70 said Indians dated, respectively, August seventh, eighteen hundred and fifty-one; August fifth, eighteen hundred and fifty-one; August seventh, eighteen hundred and fifty-one; August ninth, eighteen hundred and fifty-one; August eighth, eighteen hundred and fifty-one; August ninth, eighteen hundred and fifty-one; and August ninth, eighteen hundred and fifty-one: * * *."

32. The various tribes and bands mentioned in the foregoing acts of 1897 and 1912 (including the Clatsop, Chinook, and Ne-ha-lum tribes or bands, plaintiffs herein) accepted the sums appropriated to pay their claims in satisfaction and in full of all demands or claims against the United States for lands claimed by them and described in the agreements or unratified treaties in the year 1851 between such tribes and bands and the United States.

33. Plaintiff bands of Tillamooks did not belong to the "Tillamook Tribe" mentioned in the act of August 24, 1912, *supra*, nor to the "Naalem band of Tillamooks" mentioned in the act of June 7, 1897, *supra*. The territory of plaintiff bands of Tillamooks, known as Southern Tillamooks, lay south, while that of the Tillamook Tribe and the Naalem Band of Tillamooks, known as North Tillamooks, lay north of the north line of the Coast Reservation. None of plaintiff tribes or bands which was a party to the unratified treaty of August 11, 1855, described in the jurisdictional act, was a party to any of the above-mentioned 1851 treaties, or party beneficiary of the acts of Congress.

34. The particular lands for which claim for compensation is made in the petition herein, and as hereinbefore described and to which plaintiffs Tillamooks, Coquille, Too-too-toney, and the Chetco tribes held and owned the original Indian title through exclusive use and occupancy from time immemorial, were taken by the United States for a public purpose on or shortly after November 9, 1855, without payment of just compensation.

35. The various tribes and bands of Indians, including plaintiffs Tillamooks, Coquille, Too-too-to-ney, and Chetco, permanently placed by the Government on the Coast Reservation as described and defined by Executive Order of November 9, 1855, and as subsequently diminished, acquired occupancy rights, such as they were, in common
71 according to population or according to the specific area assigned to each tribe or band. The Coast Reservation as defined in Executive Order of November 9, 1855, was not originally created nor subsequently recognized by Congress, other than by the Act of August 12, 1894, and subsequent acts, as a reservation for the exclusive use and occupancy of plaintiff tribes and bands parties to the unratified

treaty of August 11, 1855, and other tribes and bands placed thereon.

36. Plaintiff bands of the Tillamooks tribe did not and have not at any time given binding consent to the placing by the United States of other tribes and bands of Indians on the land to which plaintiff bands of the Tillamooks tribe owned and held original Indian title in 1855 and for many years prior thereto.

Plaintiffs Tillamooks, Coquille, Too-too-to-ney, and Chetco tribes, parties to the unratified treaty of August 11, 1855, did not and have not given binding consent to the placing by the United States of other tribes or bands of Indians on the reservation included within the original or diminished boundaries of the Coast or Siletz Reservation.

37. Among the Indian tribes and bands, some of which appear to have been permanently placed upon and given permanent homes on the Coast Reservation, which did not have or claim original Indian use and occupancy title to any of the lands within such reservation, or to the lands for which claim is made in the petition herein under clause (*b*) of the jurisdictional act by the tribes and bands, parties to the unratified treaty of August 11, 1855, were the following:

(1) The Rogue River Tribe: Treaty of September 10, 1853, ratified April 12, 1854 (10 Stat. 1019)—art. 2 of which defined an area within the lands ceded as a reserve for their temporary use and occupancy "until a suitable selection shall be made by direction of the President for their permanent residence, and buildings erected thereon, and provision made for their removal."

(2) The Cow Creek Band of the Umpqua Tribe: Treaty of September 19, 1853, ratified April 12, 1854 (10 Stat. 1027)—art. 2 of which was the same as that above mentioned with reference to the Rogue River Tribe.

72 (3) The Chasta tribe, the Scotons tribe, and the Grave Creek band of Umpqua Tribe: Treaty of November 18, 1854, ratified March 3, 1855 (10 Stat. 1122)—art. 2 of which provided that these tribes would remove to "whatever reserve the President may at any time hereafter direct."

(4) The Confederated Bands of the Umpqua Tribe, and the Calapooeia bands residing in the Umpqua Valley: Treaty of November 29, 1854, ratified March 3, 1855 (10 Stat. 1125)—art. 1 of which defined an area within the cession

made by these Indians as a reservation, and stated that such "reserve shall be held by said Confederated bands, and such other bands as may be designated to reside thereupon, as an Indian reservation." This article further provided that the bands, parties to the treaty, might be moved elsewhere with their consent, and, if so moved, the reservation mentioned was to be sold by the United States for their benefit.

(5) The Confederated Bands of Indians residing in the Willamette Valley (15 bands listed), most of whom belonged to the Calapoosia Tribe: Treaty of January 22, 1855, ratified March 3, 1855 (10 Stat. 1143)—art. 1 of which provided that these bands were to remain in the area ceded by them in their treaty and on such temporary reserves thereon as should be made by the Indian superintendent "until a suitable district of country shall be designated for their permanent home and proper improvements made thereon; * * * At which time, or when thereafter directed by the superintendent or agent, said confederated bands engage peaceably to vacate the country hereby ceded and remove to the district which shall be designated for their permanent occupancy."

(6) The Mo-lal-la-las, or Molel, Tribe: Trea[illegible] of December 21, 1855, ratified March 8, 1859 (12 Stat. 98[illegible]). The Indians of this tribe by art. 1 of the treaty became confederated with the Indians of the Umpqua Tribe and the Calapoosia Tribe, or bands. Art. 3 of this treaty provided, as to the Molel, the Umpqua, and the Calapoosia tribes, that "* * * it is hereby agreed, the Umpaquahs and Calapoosias agreeing, that the bands thus confederated shall immediately remove to a tract of land selected on the headwaters of the Yamhill River adjoining the coast reservation; thereon to remain until the proper improvements are made upon
73 that [Coast] reservation, for the accommodation of said confederated bands, in accordance with the provisions of * * * the treaty of 29th November 1854, and when so made, to remove to said coast reservation, or such other point as may, by direction of the President * * *, be designated for the permanent residence of said Indians." Art. 6 stated that the temporary reserve or encampment adjoining the Coast Reservation was in the "Grand Round Valley." This temporary reservation was created by Executive Order of June 30, 1857 (finding 28) and was known as

the Grand Ronde Reservation. The United States agreed in this treaty to pay all costs of removal for transportation, subsistence, and medical care, in addition to all other promises and the payments provided for; and $12,000 was provided for in art. 6 to be used in extinguishing claims of settlers in the area of the temporary encampment, or reservation, in the Grand Ronde Valley.

The Indians of the Rogue River and Chasta tribes were placed on the Coast Reservation in May 1857.

Conclusion of law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs, the tribes and bands of the Tillamooks, the Coquille, the Too-too-to-ney, and the Chetco, are entitled to recover. Judgment as to the amount of recovery and the amount of offsets, if any, is reserved for further proceedings under rule 39 (a).

The court further concludes as a matter of law that plaintiffs Umpqua Tribe, Chinook Tribe, Clatsop Tribe, Ne-halum Tribe, Confederated Tribes of the Grand Ronde Community, Oregon, Willamette Valley Confederated Tribe, and the Siletz Confederated Tribe are not entitled to recover, and the petition is dismissed as to these tribes.

Opinion

LITTLETON, *Judge*, delivered the opinion of the court:

Section 1 of the jurisdictional act, 49 Stat. 801, under which this suit was brought provides as follows:

74 That jurisdiction is hereby conferred on the Court of Claims with the right of appeal to the Supreme Court of the United States by either party, as in other cases, to hear, examine, adjudicate, and render final judgment (a) in any and all legal and equitable claims, arising under or growing out of any treaty, agreement, Act of Congress, or Executive order, or for the failure of the United States to pay any money or other property due, which those Indian tribes or bands, or portions thereof, and their descendants, described in the ratified treaties of September 10, 1853 (10 Stat. 1018), September 19, 1853 (10 Stat. 1027), November 18, 1854 (10 Stat. 1122), November 25, 1854 (10 Stat. 1125), January 22, 1855 (10 Stat. 1143), and December 21, 1855 (12 Stat. 981), may have against the United States; and

(b) any and all legal and equitable claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon the whole or any part of the lands and their appurtenances occupied by the Indian tribes and bands described in the unratified treaties published in Senate Executive Document Numbered 25, Fifty-third Congress, first session (pp. 8 to 15), at and long prior to the dates thereof, except the Coos Bay, Lower Umpqua, and Siuslaw Tribes, it being the intention of this Act to include all the Indian tribes or bands and their descendants, with the exceptions named, residing in the then Territory of Oregon west of the Cascade Range at and long prior to the dates of the said unratified treaties, some of whom, in 1855, or later, were removed by the military authorities of the United States to the Coast Range, the Grand Ronde, and the Siletz Reservations in said Territory.

Sec. 2 provides "That if any claim or claims be submitted to said courts hereunder they shall settle the rights therein, both legal and equitable, of each and all the parties thereto, notwithstanding the lapse of time or the statutes of limitation; * * * and any nation, tribe, or band the court may deem necessary to a final determination of such suit or suits may be joined therein by order of the court." This section further provides that "The petition shall set forth all the facts upon which the claims are based and shall be signed and verified by the attorney or attorneys employed to prosecute such claim or claims and who are under contract with said Indians approved in accordance with existing law." It further provides that any and
75 all claims against the United States should be forever barred "unless suit be instituted or petition filed as herein provided" within five years from date of approval of the act.

Plaintiffs brought suit under clause (b) of the act upon claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon lands occupied by Indian tribes and bands described in the unratified treaty dated August 11, 1855, published in Senate Executive Document No. 25, Fifty-third Congress, first session, p. 815. This unratified treaty is set out in full in paragraph 8 of the petition (see finding 3).

The first question to be disposed of is whether certain tribes and bands made parties plaintiff in the petition

herein are entitled under the jurisdictional act and the allegations of the petition to bring and maintain this suit for compensation.

The second amended petition sets forth, in paragraphs 5, 6, and 7, specific claims based on original Indian title for lands alleged to have been taken only by and on behalf of plaintiff tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos. The petition does not set forth facts sufficient to show the nature or extent of any legal or equitable claim, or claims, if any, which any of the tribes made plaintiffs in the petition, other than the four tribes above mentioned, may have against the United States.

Paragraph 13 of the amended petition seems to be a blanket claim without any allegation of facts to show the nature, extent, or basis thereof, on behalf of all tribes and bands of Indians made plaintiffs herein, including the Tillamooks, Coquilles, Too-too-to-neys, and Chetcos, whether they did or did not have treaties ratified or unratified with the Government, or no treaties at all, some of which Indians appear to have been, at some time not alleged, placed by the Government on the Coast Reservation conditionally created by Executive Order of November 9, 1855, as set forth in finding 13.

Paragraph 11 of the petition states "That said plaintiffs were Coast tribes" and that when said reservation was set apart for "Coast, Umpqua and Willamette tribes they became entitled jointly with such other Indians therein
76 named to its lands for a reservation to the exclusion of Indians not therein named. That defendant violated their said rights in said reservation to their great damage by placing Rogue River, Chasta, and other Indians [upon these lands] not included in the terms of [the Executive Order creating] said reservation and by taking the lands as hereinafter described." The "other Indians" are not identified by the petition, or by proof.

Paragraph 12 of the petition states "That by Executive Order of December 21, 1865, the defendant took away from said Indians without authority of law to their great damage said tract No. 479. That by act of Congress March 3, 1875 (18 Stat. 420, 446 [446]), the defendant took away said two tracts each No. 578, leaving only tract No. 579." (See sketch reproduced in finding 15.)

Paragraph 13 of the petition alleges as follows:

> That all of said tribes including bands and tribes having entered into no treaty ratified or unratified claim damages because of violations of agreements, Acts of Congress and executive orders and because of Acts of Congress and executive orders and acts of dispossession relating to realty, personal property, rights of possession, rights to minerals, timber rights, fishing and hunting rights.

No other mention is made in the petition of any specific claim by any particular tribe or band that was a party to any of the ratified treaties mentioned in clause (a) of the jurisdictional act which is claimed to have arisen under or to have grown out of any of the ratified treaties, or which may have arisen under or grown out of any Executive Order or acts of Congress which may have violated any of such ratified treaties. The above-quoted allegations from pars. 11, 12, and 13 of the petition appear to be the sole basis for the claim, or claims, for "damages" made on behalf of the Umpqua, Chinook, Clatsop, and Ne-ha-lum tribes, the Confederated Tribes of the Grand Ronde Community, Oregon, the Willamette Valley Confederated Tribes of Indians, and the Siletz Confederated Tribes of Indians. The petition does not allege and the proof does not show the names of the various tribes and bands from which the last-mentioned three confederated tribes were formed, or which of
77 said predecessor tribes and bands of these confederated tribes had ratified treaties with the Government and which predecessor tribes had not.

The allegations of the petition are, therefore, not sufficient under the terms of the jurisdictional act and the rules of this court to constitute a cause of action against the United States by the last-mentioned seven tribes, made parties plaintiff in the petition, and, notwithstanding this defect in the petition, the evidence submitted is not sufficient to show that any of these seven tribes have a legal or equitable claim for compensation against the United States.

The claims which seem to be made on behalf of these seven plaintiff tribes and, also, one phase of the claims made on behalf of the tribes and bands of plaintiffs Tillamooks, Coquilles, Too-too-to-neys, and Chetcos appear to be grounded upon the assertion made in proposed findings and

briefs of plaintiffs that by the Executive Order of November 9, 1855, the Coast Reservation, consisting of an area 120 miles north and south along the coast of Oregon by 20 miles east and west, composed in part of lands to which the bands of the Tillamooks formerly owned and held original Indian title, was, by the terms of the Executive Order, legally and permanently created as a reservation for the sole exclusive use and occupancy of the Coast, Umpqua, and Willamette Valley tribes of Indians; that the placing on said reservation of Indians not belonging to the Coast, Umpqua, or Willamette tribes constituted a taking in part of the lands legally belonging to said Coast tribes; and, also, that the reductions as set forth in the findings of said originally defined Coast Reservation by Executive Order of December 21, 1865 and the act of Congress of March 3, 1875 constituted an unlawful taking without just compensation of lands belonging to said Coast and Umpqua tribes of Indians. It is admitted that the Willamette tribes were not placed on the reservation.

These contentions made on behalf of all plaintiffs with respect to beneficial ownership (other than rights based on original Indian title) through alleged exclusive use and occupancy rights in and to the whole of the Coast Reservation, as described under Executive Order of November 9,
78 1855, cannot be sustained under the terms and conditions of that Executive Order, and the conditions under and the extent to which Congress subsequently in 1875 recognized and ratified said Executive Order.

The unratified treaty dated August 11, 1855, mentioned in clause (b) of the jurisdictional act, which was made with and signed by the tribes and bands of Tillamooks, Sinslaus (Siuslaw), Umpquas, Kowes Bay (Coos Bay), Coquilles, Too-too-to-neys, and the Chetcos, undertook to cede outright to the United States, for the considerations mentioned therein, all lands to which these tribes and bands claimed original Indian title; and it contained a provision immediately following such cession, in art. 1, that so much of the country described therein as ceded as was contained in certain boundaries subsequently specified "shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, and such other bands or parts of bands as may, by direction of the President of the United

States, be located thereon." Then followed the provision that "Such tract for the purpose contemplated shall be held and regarded as an Indian reservation, to wit: * * *. All of which tract shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use of such Indians as are, or may hereafter be, located thereon; * * *." The intent and purpose of these provisions was to make the whole of such "reservation" public land of the United States subject to use for Indian purposes, to the extent deemed advisable, subject to future reduction; and even if this treaty had been ratified the original tract referred to as a residence or reservation would have been subject to reduction without compensation since under the terms of the cession it would have belonged entirely to the United States and set apart, as stated, for the Indians "until otherwise directed." The Executive Order of November 9, 1855, issued after the treaty had been signed, and all actions thereunder treated this land as public land.

When various other treaties made with various Indian tribes in Oregon were transmitted to the Senate in 1855 for consideration and action, the treaty of August 11, 1855
79 with certain of the tribes and bands above-mentioned was accidentally and unintentionally overlooked and not transmitted to the Senate until February 11, 1857. In the meantime, and during the period April 18 to October 29, 1855, as shown in finding 13, General Palmer, the Commissioner of Indian Affairs, and the Commissioner of the General Land Office recommended to the Secretary of the Interior for the approval of the President the conditional creation of "A large reservation of land, for the Coast, Umpqua, and Willamette Tribes of Indians of Oregon Territory, as shown by the blue shaded lines on the enclosed diagram taken from the general map" received by the Commissioner of Indian Affairs from General Palmer. The map referred to is in evidence as exhibit 14 to stipulation No. 1. General Palmer had recommended the creation of this conditional reservation on April 18, before he negotiated the 1855 treaty in August. When he made the treaty, the conditional reservation therein mentioned conformed substantially with his earlier recommendation. The proposed conditional reservation was recommended and created in anticipation that Indian title to the land included therein would be purchased from and

ceded by the Indians by the treaty to be negotiated with them and would be, after the issuance of such order, treated as public land of the United States temporarily in use for Indian purposes.

In a letter of October 29, 1855 to the Secretary of the Interior (finding 13), the Commissioner of Indian Affairs explains in detail that the authority for creation of the proposed conditional reservation by Executive Order was simply a withdrawal of land from public settlement for the time being.

In a letter of November 8, 1855, the Secretary of the Interior submitted to the President for his approval a "proposed reservation for Indians on the coast of Oregon Territory" as had been recommended, and further stated to the President as follows:

> Before submitting the matter to you I desired to have a full report of the subject from the Indian Office, and the letter of the head of that Bureau of the 29th ultimo having been received and considered, I see no objection to the conditional reservation asked for, subject to future
> 80 curtailment if found proper, or entire relief thereof should Congress not sanction the object rendering this withdrawal of the land from white settlement at this time advisable.

The Executive Order of November 9, 1855, issued pursuant to and in accordance with this letter, stated that "The reservation of the land within the blue shaded lines is hereby made for the purposes indicated in the letter of * * * the Secretary of the Interior of the 8th November 1855."

It will be seen from the above that the reservation of land for Indians was, as stated in the Executive Order, a conditional reservation or a withdrawal of public land from white settlement, subject to future curtailment or reduction if found proper by the President or to entire withdrawal as a reservation for Indians should Congress not sanction, as advisable, the object which rendered the withdrawal from white settlement of the land within the area of the reservation described.

Subsequent actions by the President in the Executive Order of December 21, 1865, and by Congress in the acts of March 3, 1875 (18 Stat. 420), February 8, 1887 (24 Stat. 388), August 15, 1894 (28 Stat. 286, 323), and May 13,

1910 (36 Stat. 367), show that the President and the Congress at all times until 1894 regarded the original "Coast Reservation" described by the Executive Order of November 9, 1855 to be a conditional or temporary reservation for Indian purposes through withdrawal by the President of the land therein from white settlement for the time being, but subject to future curtailment or diminution for purposes of public settlement if the President or the Congress deemed it desirable or advisable to make such curtailment. Therefore none of plaintiff Indian tribes or bands placed on the Coast Reservation, including the Tillamooks tribe, became entitled under and by virtue of the terms and conditions of the Executive Order of November 9, 1855 to recover compensation as for a taking of land to which they had exclusive use and occupancy title under approval and recognition by Congress, when the Coast Reservation, as originally defined by said Executive Order, was subsequently in 1865 and 1875 curtailed or diminished. *Sioux Tribe of Indians*
81 v. *United States*, 94 C. Cls. 150, affirmed 316 U. S. 317.

Congress did not prior to 1894 recognize or approve the so-called Coast Reservation as originally created by Executive Order of November 9, 1855, or as diminished by Executive Order of December 21, 1865, and the act of March 3, 1875, *supra*, as a reservation of land for the sole and exclusive use and occupancy by the Indians thereon in such way or to such extent as would give them beneficial ownership of, or use and occupancy title to, any portion thereof, until the passage of the general allotment act of February 8, 1887, *supra*, and the acts of August 15, 1894, (28 Stat. 286, 323 (sec. 15)); May 13, 1910, *supra*, and May 18, 1916, 39 Stat. 123, 149.

On and after enactment of sec. 15 of the act of August 15, 1894, *supra*, Congress approved and recognized the Coast or Siletz reservation as it existed immediately prior thereto as beneficially belonging to the Indians thereon. After this act of August 15, 1894, approving an agreement ceding 178,840 acres for $142,600, Congress did not take any part of the reservation without compensation, but by that act and under sec. 3, act of March 3, 1871 (16 Stat. 544, 570), it recognized the reservation as belonging to the Indians thereon.

From these conclusions, it results that the Umpqua, Chinook, Clatsop, and the Ne-ha-lum tribes and the Con-

federated Tribes of the Grand Ronde Community, Oregon, the Willamette Valley Confederated Tribes of Indians, and the Siletz Confederated Tribes of Indians are not entitled to recover.

Moreover, and in any event, the Umpqua Tribe is not entitled to recover because it is expressly excluded under clause (b) of the jurisdictional act. The Chinook, Clatsop, and Ne-ha-lum tribes are not entitled to recover as for a taking of lands to which they may have had original Indian title for the further reason that their unratified treaties made in 1851 are not included in the jurisdictional act, and also for the reason that under the acts of June 7, 1897, 30 Stat. 62, and August 24, 1912, 37 Stat. 518, 535, they were paid various sums by Congress which were accepted by them in full of all demands or claims against the United States.

82 *Klamath and Moadoc Tribes of Indians et al.* v. *United States*, 296 U. S. 244. The Willamette Tribe of Indians or the "Confederated Bands of the Willamette Valley" as they were known and designated in a ratified treaty with them dated January 22, 1855, 10 Stat. 1143, were not brought to or placed upon the Coast Reservation, and they cannot, therefore, sue under clause (a) or (b) of the jurisdictional act or under the Executive Order of November 9, 1855.

The evidence does not show of or from what tribes or bands the Confederated Tribes of the Grand Ronde Community, the Willamette Confederated Tribes, and the Siletz Confederated Tribes, made plaintiffs herein, were composed or organized; neither does the evidence show when the Indians, from which the so-called Confederated Tribes of the Grand Ronde Community and the Siletz Confederated Tribes were organized, were moved to or placed upon the Coast Reservation, other than that the Rogue River and Chasta Indians, who appear to have belonged to the so-called Siletz Confederated Tribes, were placed thereon in May 1857.

The petition is therefore dismissed as to the following plaintiffs: The Umpqua, Chinook, Clatsop, and Ne-ha-lum tribes, the Confederated Tribes of the Grand Ronde Community, Oregon, the Willamette Valley Confederated Tribes of Indians, and the Siletz Confederated Tribes of Indians.

The next question involves the right of the Tillamook, Coquille, Too-too-to-ney, and Chetco tribes to recover compensation on the basis of original Indian title to the lands which they claim the Government took in November 1855, or soon thereafter.

Counsel for defendant do not deny that the United States took Indian title to the lands involved to the extent that the Indians may have had such title, but they contend, first, that if it be assumed that each of the four tribes above-mentioned has proven original Indian title through use and occupancy to the exclusion of other Indian tribes of the lands claimed by them they are not entitled to recover compensation therefor for the reason that no right, title, or interest in, to, or upon the whole or any part of such
83 lands as against the sovereign rights of the United States may be acquired by an Indian tribe or be recognized by the court as a basis for judgment in the absence of specific Congressional recognition of beneficial ownership through original title; and, that the United States has never recognized any of these plaintiffs as having such a right, title, or interest in, to, or upon any lands so occupied by them. In support of this contention counsel cites, among others, the opinions of this court in *Coos Bay Indian Tribes et al.* v. *United States*, 87 C. Cls. 143; *Duwamish et al.* v. *United States*, 79 C. Cls. 530; and *The Wichita Indians et al.* v. *United States*, 89 C. Cls. 378, 416.

Before analyzing these cases we will discuss the above contention in the light of other decided cases and the history of the aboriginal right or title of Indian tribes in and to property exclusively possessed by them, as uniformly recognized by the United States.

The contention of counsel for defendant is but another way of saying that an act authorizing suit on original Indian title simply provides a forum and that Indians cannot recover compensation from the United States as for a taking of their original possessory title to lands unless such title to the area, with respect to which claim is made, has been expressly recognized or conceded by the United States through some treaty, agreement, or act of Congress.

From the standpoint of the legal and equitable nature of a claim and the legal principles applicable thereto, the fundamental right of an Indian tribe to recover compensa-

tion for having been deprived by the United States of the beneficial aboriginal ownership of land is no different in a case where the United States has consented to be sued on the basis of original Indian title from a case where the United States has consented to be sued on the basis of a claim arising under or growing out of a treaty, agreement, or act of Congress, except in the nature and degree of proof required to establish use and occupancy title. Where consent to be sued on the basis of original Indian title has been given, as in this case, occupancy of these Indians to the exclusion of other tribes necessary to establish aboriginal possessory title is a "question of fact to be determined as any other question of fact." *United States, as Guardian of the Hualpai Indians of Arizona*, v. *Santa Fe Pacific Rail-Road Co.*, 314 U. S. 339. Cf. *The Assiniboine Indian Tribe* v. *United States*, 77 C. Cls. 347; *Coos (or Kowes) Bay, Lower Umpqua (or Kalawatset), and Siuslaw Indian Tribes* v. *The United States*, 87 C. Cls. 143. But where the consent to be sued is limited to a claim, or claims, arising under or growing out of a treaty, agreement, or act of Congress, proof of aboriginal use and occupancy title is not necessary where such treaties, agreements, or acts of Congress specifically provide or recognize that the land in respect of which claim is made has been or is set apart for the exclusive use and occupancy of the tribes concerned, or jointly for them and other tribes with their consent. *Shoshone Tribe* v. *United States*, 82 C. Cls. 23; 299 U. S. 476. In the case of a treaty title, the Indians concerned simply reserve, by specific recognition in the treaty, their original title to certain of their lands, or acquire exclusive use and occupancy title to other lands, in exchange for lands to which they had held original Indian Title. Where the consent to be sued is limited to claims arising under or growing out of a treaty, and the treaty relied upon is only a treaty of peace and amity and does not admit or recognize an exclusive use and occupancy title of the Indians to the lands in respect of which claim is made, the court is without authority to determine, adjudicate, and render judgment upon the basis of aboriginal Indian title. *Duwamish, et al. Tribes of Indians* v. *United States*, 79 C. Cls. 530. *The Crow Nation or Tribe of Indians of Montana* v. *United States*, 51 C. Cls. 238; *The Wichita Indians, et al.* v. *United*

84

States, supra; and *The Northwestern Bands of Shoshone Indians* v. *United States*, 95 C. Cls. 642, affirmed March 12, 1945, 324 U. S. —. And even if the proof is sufficient, in a case where the right to sue is limited to claims arising under or growing out of treaties, to show that the tribe or tribes concerned had original Indian title through use and occupancy to the exclusion of other Indian tribes, the court cannot enter judgment on the basis of such original title. *The Northwestern Bands of Shoshone Indians* v. *United*
85 *States, supra; Duwamish, et al.* v. *United States, supra; The Wichita Indians, et al.* v. *United States, supra.*

Ever since the Government of the United States was first established the United States through its legislative and executive departments has, with one qualified exception in the case of the Indians of California, consistently conceded and recognized that Indians had a beneficial possessory ownership in lands used and exclusively occupied by them, notwithstanding general consent to be sued by the Indians on the basis of such original occupancy title or on a treaty title was not given. *Johnson and Graham's Lessee* v. *William M'Intosh*, 8 Wheat. 543; *Cramer et al.* v. *United States*, 261 U. S. 219; *United States* v. *Santa Fe Pacific R. R. Co., supra.*

In practically all instances the special consent given by Congress from time to time to particular tribes to sue the United States has been limited to claims arising under or growing out of treaties, agreements, or acts of Congress, but in *Johnson* v. *M'Intosh, supra*, the court held, p. 574, that the Indians "were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." This case further pointed out that the character of the Indians inhabiting this country and their mode of life and subsistence were such that it was not practicable for them to be incorporated with the people of the victorious nation that had discovered and was taking possession of the continent and become

subjects, or citizens, of the Government, with whom they were connected, in accordance with the general rule dictated by humanity and a wise policy which requires "that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections, and united by force to strangers."

86 The hundreds of treaties and agreements made with Indian nations or tribes, commencing as early as 1778, all indicate to a greater or lesser degree, a complete recognition by the United States of the legal principle established by the cases last-above cited. The provisions of sec. 8, art. 1 of the Constitution giving to Congress power to regulate commerce with the Indian tribes and the practice of the Government over a long period of years in making treaties with such tribes under sec. 2, art. 2 of the Constitution seem to have been predicated upon the principle that the Indians had a beneficial ownership in lands occupied, used, and exclusively possessed by them, and that such right of occupancy through aboriginal possession should, in order to give the United States full legal ownership, be extinguished by purchase through ratified treaties, agreements, or acts of Congress made and enacted pursuant to the power of Congress over the property and affairs of Indian tribes for their benefit.

In *United States* v. *Santa Fe Pacific Railroad Co.*, 314 U. S. 339, 345–347, the court said:

> Occupancy necessary to establish aboriginal possession is a question of fact to be determined as any other question of fact. If it were established as a fact that the lands in question were, or were included in, the ancestral home of the Walapais in the sense that they constituted definable territory occupied exclusively by the Walapais (as distinguished from lands wandered over by many tribes), then the Walapais had "Indian title" which, unless extinguished, survived the railroad grant of 1866. *Buttz* v. *Northern Pacific Railroad*, *supra*.
>
> "Unquestionably it has been the policy of the Federal Government from the beginning to respect the Indian right of occupancy, which could only be interfered with or determined by the United States." *Cramer* v. *United States*, 261 U. S. 219, 227. This policy was first recog-

nized in *Johnson* v. *M'Intosh*, 8 Wheat. 543, and has been repeatedly reaffirmed. *Worcester* v. *Georgia*, 6 Pet. 515; *Mitchel* v. *United States*, 9 Pet. 711; *Chouteau* v. *Molony*, 16 How. 203; *Holden* v. *Joy*, 17 Wall. 211; *Butts* v. *Northern Pacific Railroad*, *supra*; *United States* v. *Shoshone Tribe*, 304 U. S. 111. As stated in *Mitchel* v. *United States*, *supra*, p. 746, Indian "right of occupancy is considered as sacred as the fee simple
87 of the whites." Whatever may have been the rights of the Walapais under Spanish law, the *Cramer* case assumed that lands within the Mexican Cession were not excepted from the policy to respect Indian right of occupancy. Though the *Cramer* case involved the problem of individual Indian occupancy, this Court state that such occupancy was not to be treated differently from "the original nomadic tribal occupancy." (p. 227.) Perhaps the assumption that aboriginal possession would be respected in the Mexican Cession was, like the generalizations in *Johnson* v. *M'Intosh*, *supra*, not necessary for the narrow holding of the case. But such generalizations have been so often and so long repeated as respects land under the prior sovereignty of the various European nations, including Spain, that, like other rules governing titles to property (*United States* v. *Title Insurance & Trust Co.*, 265 U. S. 472, 486–487) they should now be considered no longer open. * * *.

Nor is it true, as respondent urges, that a tribal claim to any particular lands must be based upon a treaty, statute, or other formal government action. As stated in the *Cramer* case, "The fact that such right of occupancy finds no recognition in any statute or other formal governmental action is not conclusive." 261 U. S. at 229.

If, in a suit by Indians against the United States pursuant to a special jurisdictional act, evidence of direct recognition by the United States that the Indians had property rights or a beneficial ownership in lands based on original Indian title through exclusive possession and occupany of such lands were necessary, it would be sufficient in the case at bar to point to the act of August 14, 1848, 9 Stat. 323, which made all land laws of the United States applicable to the Territory of Oregon thereby created, and in section 1 stated that nothing therein contained "shall be construed to impair the rights of person or property pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, * * *." Further, in an opinion on

the question of original Indian title to lands and the right of settlement thereon as public lands, the Attorney General on June 5, 1855 (7 Op. Atty. Gen. 293, 299), stated and held that "There is one other idea suggested by the
88 Commissioner of Indian Affairs, and the documents he communicates, as being current in Oregon, namely, that any white settler may rightfully take possession of any of the lands occupied by the Indians, and oust them prior to the extinguishment of their occupancy-title by the United States. This idea is too absurd to admit of reasoned reply. Suffice it to say that a white settler has the same right thus to oust the Indians as he has to oust white men, and no more; that is, the right to substitute robbery for purchase, and violence for law."

The United States, of course, possessed power, whether or not its action was just and legal from the standpoint of fundamental property rights of Indians, to deprive the Indians, by force or otherwise, of their property rights in and beneficial ownership of lands occupied by them, and to move them about as it pleased, and in the absence of a consent by the United States to be sued the courts cannot interfere or adjudicate a claim for compensation on the basis of such action; the only recourse of the Indian in such a case being to petition Congress for relief. But the situation is entirely different where, as in a case like the present one, Congress has given the consent of the United States to be sued on claims for compensation based on original Indian title or rights in, to, or upon lands occupied by them arising under or growing out of such action by the United States. When such consent to be sued has been given, ordinary principles of law and equity, so far as applicable, govern the rights of the parties.

It will be found upon analysis that the cases in this court hereinabove mentioned and chiefly relied upon by the defendant do not support the contention that recovery cannot be had on the basis of original Indian title unless and until Congress has specifically recognized such title.

The jurisdictional act in the *Coos Bay Indian Tribes et al., supra*, chiefly relied upon by defendant, like clause (b) of the jurisdictional act in the present case, authorized the Indians to bring suit on claims growing out of original Indian title, and the court assumed in deciding the case

that if plaintiff tribes had established by sufficient evidence such original Indian title through exclusive use and
89 occupancy they would be entitled to recover compensation but held that the evidence submitted in that case was not sufficient to establish such title to the area claimed, or to any definite portion thereof. The statement by the court in its opinion that the United States had never recognized the Coos Bay and other Indian tribes, plaintiffs in that suit, as the aboriginal owners of lands to which they made claim had reference to the proposition that since plaintiffs had not established aboriginal use and occupancy title they were not otherwise entitled to recover as for a taking of such lands by the Government, because the Government had not specifically recognized by treaty, agreement, or act of Congress, beneficial ownership of the Indians through their exclusive right to use and occupy the whole or any portion of the lands for which claim was made.

In the case of *The Duwamish et al. Tribes*, *supra*, the suit was brought under a jurisdictional act, sec. 1 of which provided for adjudication of claims arising under or growing out of certain treaties or acts of Congress, and did not authorize the prosecution of a claim based on aboriginal Indian title. The portion of the opinion in that case relied upon by counsel for defendant discussed sec. 2 of the jurisdictional act which the Indians claimed had enlarged the jurisdiction conferred by sec. 1, and simply pointed out that the Indians as a tribe were *vested with no right to sue the United States* for the taking of their lands until subsequent to the conclusion of treaties which fixed their landed domain, and *only then by special jurisdictional acts of Congress* in cases where allegations prevailed that treaty-stipulations had not been observed, or that acts of Congress had deprived them of lands included in their reservations. The Duwamish case did not hold or intend to hold that an Indian tribe could not recover compensation on the basis of original Indian use and occupancy title as for a taking if the jurisdictional act authorized the bringing of a suit and rendition of judgment for compensation on the basis of such original title.

The opinion in the case of the *Wichita Indians*, *supra*, held that the claims asserted under certain treaties or acts of

Congress, as authorized by the jurisdictional act, could
90 not, on the evidence, be sustained, and that a claim based solely on aboriginal Indian use and occupancy title was not within the terms of the jurisdictional act.

In the case of *The Assiniboine Indian Tribe* v. *United States*, 77 C. Cls. 347, in which the jurisdictional act authorized suit on the basis of original Indian title, we held that the Indians would be entitled to recover for the taking of their lands if they were able to prove that they held original title through exclusive use and occupancy, but it was held that they had not proved such exclusive occupancy title.

We are therefore of opinion that plaintiffs Tillamook, Coquille, Too-too-to-ney, and Chetco tribes are entitled as a matter of law to recover compensation if they have proven by satisfactory evidence that they held and owned original Indian occupancy title to the exclusion of other Indian tribes to the lands of which they were deprived and which were taken by the United States without payment of compensation, and this is the final question in the case. Counsel for defendant, relying upon the *Coos Bay et al.* case, *supra*, contend that original Indian title has not been established by the proof.

From a careful study of the evidence submitted, a great deal of which is documentary, we are of opinion that these four tribes have satisfactorily established original Indian title through exclusive use and occupancy in 1855, and long prior thereto, to the lands specifically described in findings 8, 9, and 10.

On this question, counsel for the Government contend that although defendant is satisfied that the four tribes mentioned were living during and prior to 1855 in the general area of the lands claimed by them, defendant does not concede that these plaintiffs, or any of them, exclusively occupied the lands which they claim in such a manner or to such an extent as would create or would be considered a possession, either actual or constructive.

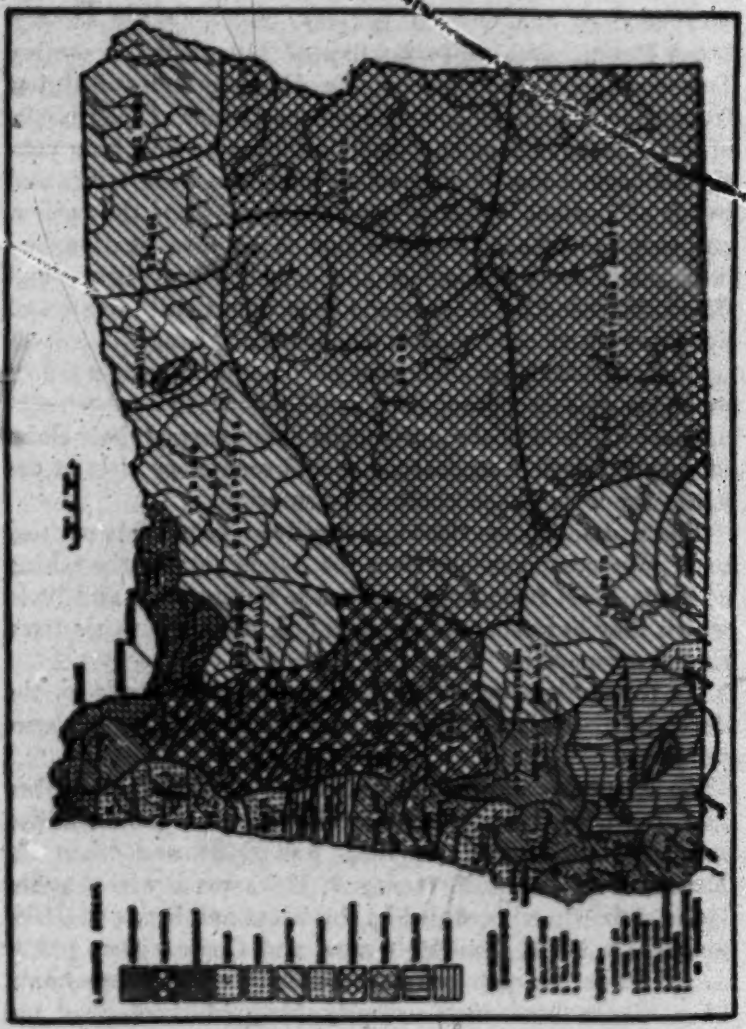
The four plaintiffs above mentioned have submitted a great deal more and much stronger evidence than was before the court in the *Coos Bay* case in which the court had to rely principally upon oral testimony which it found insufficient to

establish the claimed original title through exclusive
91 use and occupancy. No useful purpose would be served by discussing in detail the evidence submitted in this case—reference to the principal portions thereof will be sufficient.

The investigations and reports made and submitted in 1855 by Indian Superintendent Joel Palmer under and pursuant to direction and instruction of the President, through the Commissioner of Indian Affairs, substantially support the claim made by the Tillamooks, Coquille, Too-too-to-ney, and Chetco tribes in respect of the lands for which they claim compensation and to which they claim to have held original Indian title in 1855 and long prior thereto. He found and reported that these tribes and bands occupied areas with definite boundaries, and the proof which has been submitted in this case satisfactorily shows where these definite boundaries were with respect to the tribes composed of the bands mentioned in the petition. General Palmer's investigations and reports not only recognized the extent of occupancy by these tribes, but he also concluded that by such occupancy they had acquired original Indian title. Other evidence which has been submitted in the case fully supports this view and further shows that as far back as history can be traced, at least to 1750, there had been practically no change in location of plaintiff tribes and bands along the Oregon Coast, and east to the Coast Range Mountains; and that these tribes and bands held, occupied, and used such lands within rather definite boundaries to the exclusion of and in recognition by other tribes and bands. The proof satisfactorily shows that plaintiff tribes of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos lived upon, claimed, and occupied these lands in Indian fashion to the extent that Indian tribes and bands usually exclusively used and occupied lands prior to 1855 and as far back as the history of these tribes and bands can be traced.

The written report prepared by the Secretary of the Interior in the case at bar from the records and documents in the possession of the Government, which report is filed as evidence in this case, states that the lands which the Indians undertook to cede in the unratified treaty of August 11, 1855, and for which these plaintiffs make claim, appear to have been in the exclusive possession of the Indians.

92 A map showing tribal distribution of Indians in Oregon, including the Coast tribes, among which were plaintiffs Tillamook, Coquille, Too-too-to-ney, and the Chetco, prepared by the American Anthropological Association after investigation and study of the history of these Indian tribes, is reproduced below:



93 The conclusion reached by this Association from its investigation and research, as disclosed by its official

records, shows that this tribal distribution represented a fairly stable condition which had existed from about 1750.

In addition to the foregoing, we have in this case the testimony of Dr. John P. Harrington of the Smithsonian Institution, an eminent ethnologist of a quarter of a century of service in the Bureau of American Ethnology, in connection with the investigations and studies he had made and completed of the Oregon Indians, including the Oregon Coast Indians and plaintiff tribes of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos. Dr. Harrington testified that from an investigation and study of the history of the Indians of the Oregon Coast and their holdings he had been convinced beyond any shadow of a doubt that these tribes and bands of Indians which fringed the Coast were the ancient and original inhabitants, and that if an investigation had been made centuries before the expedition of Lewis and Clark the tribal holdings would have been to all intents and purposes where they were at the dawn of history.

The defendant has submitted no evidence to contradict or overcome this strong and direct evidence which has been submitted on behalf of these plaintiffs in support of their claim of original Indian exclusive use and occupancy title of the lands for which they claim compensation.

These plaintiffs are therefore legally and equitably entitled to recover compensation from the defendant for the taking of lands, as set forth and described in findings 8, 9, and 10, to which they have shown they held original Indian title from time immemorial.

As to the date or dates of taking of these lands by the defendant, the following is established by the evidence submitted:

To all intents and purposes, and as a matter of established fact, the United States considered soon after the unratified treaty dated August 11, 1855, was made and when the Executive Order of November 9, 1855, was issued that the lands claimed and occupied by the tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos were public lands for such purposes as the United States might
94. desire to use them—namely, for public homestead and settlement, and for temporary use for Indian purposes.

The executive officers of the Government, of course, thought and assumed that the treaty which was being negotiated, and which was made and signed with these four tribes between August 11 and September 8, 1855, and before the Executive Order of November 9, 1855, would be ratified by the Senate but they did not await ratification before taking the lands, but proceeded immediately after the treaty was signed to regard and to treat the lands claimed by the Tillamooks, Coquilles, Too-too-to-neys, and the Chetcos as public lands open to public homestead and settlement, except as conditionally withdrawn and reserved by the Executive Order of November 9, 1855. This action, subsequently confirmed by Congress, was a taking of the lands and the original Indian use and occupancy title. Such action was not altered but was confirmed and continued when it became known that the treaty dated August 11, 1855, would not be ratified. Such actions were known to, acquiesced in, and ratified by Congress, as hereinafter set forth.

The tribes and bands of the Coquilles, Too-too-to-neys, and the Chetcos were entirely moved off their lands about November 9, 1855, or soon thereafter, and placed on a portion of the land to which the tribe and bands of Tillamooks held original Indian title. The lands of the Coquille, Too-too-to-ney, and Chetco tribes were therefore unquestionably taken at that time.

The bands composing plaintiff Tillamooks tribe were not altogether moved off their land, but they were moved and confined to the conditional reservation created by the Executive Order of November 9, 1855, along with other Indians of various other tribes and bands, and such of the land of the Tillamooks tribe as lay east of the eastern boundary of this conditional reservation was taken November 9, 1855. This conditional reservation for Indian purposes was, as has been stated, composed in part of a portion of the land to which plaintiff tribe and bands of Tillamooks held original Indian title and which they continued to occupy jointly with other Indians; this land of the Tillamooks was also taken by the United States at the same time the other lands above-
mentioned were taken. The land composing the reser-
95 vation was treated and regarded from November 8,
1855 as public land of the United States subject to be opened for public settlement as the President or Congress

might direct, and most of it was subsequently so opened for settlement.

The above-described actions of the Executive officers of the Government, dating from November 9, 1855, in carrying out the Executive Orders of 1855 and 1865, were ratified and confirmed by Congress by the passage of the act of March 3, 1875, 18 Stat. 420. This ratification of the 1855 and 1865 Executive Orders confirmed the original taking as of November 9, 1855. The land originally belonging beneficially to the tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos through original Indian title was therefore taken on November 9, 1855. *Shoshone Tribe of Indians of the Wind River Reservation in Wyoming v. United States*, 82 C. Cls. 23, 299 U. S. 476; and 85 C. Cls. 331, 304 U. S. 111.

The compensation to which these tribes are entitled should therefore be measured by the value of the lands described in findings 8, 9, and 10 on that date, plus an additional amount measured by a reasonable rate of interest to make just compensation. However, these four tribes are not legally and equitably entitled to recover the entire value above mentioned, since those values must be offset as of November 9, 1855 by the values as of that date of their interests in the land comprising the reservation on August 15, 1894, of which interests the Indians of these tribes then became the beneficial owners through recognition by Congress on the basis of allotments in severalty which had been made and on the basis of population as to unallotted lands or proceeds therefrom. In effect, and for all practical purposes, these Indians, so far as their right to compensation is concerned, had had these occupancy interests (first recognized on August 15, 1894, as being exclusive as against the United States) in the land of the reservation from the date of taking in November 1855, but the extent of such interests were, until 1894, uncertain, indefinite, and legally indeterminable until Congress by the act of August 15, 1894, ratifying an agreement of purchase by the United States of a portion of the then existing reservation, recognized the Indians on the then existing reserva-
96 tion as being the beneficial owners thereof. This act of 1894 was a recognition by ratification as of Novem-

ber 9, 1855 of such interests as the Indians had in 1894, and which interests they had actually enjoyed through occupancy since 1855. The values as of November 9, 1855 of such interests as these plaintiffs had on August 12, 1894 are therefore proper legal and equitable offsets against the values of the lands taken in November 1855.

Although the Tillamooks originally held Indian title to their interest in the reservation as it existed in 1894, such title had been taken in 1855, but they were not deprived of possession to the extent of that interest, and their exclusive use and occupancy title to such interest again became vested and determinable in 1894.

As to the Coquilles, Too-too-to-neys, and the Chetcos, their exclusive use and occupancy interests in the reservation, which became vested by recognition in 1894, represented an equitable consideration in part for their lands which had been taken by the Government in 1855, and which interests they had enjoyed through actual occupancy since the date of taking of their lands about November 9, 1855.

Judgments for the amount of compensation to which plaintiff tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos may be entitled and the determination of the amount of offsets, in addition to those above-mentioned, if any, are reserved for further proceedings under rule 39 (a).

It is so ordered.

MADDEN, *Judge;* and WHITAKER, *Judge*, concur.
WHALEY, *Chief Justice*, dissents.
JONES, *Judge*, took no part in the decision of this case.

99 *Judgment of the Court*

April 2, 1945

Upon the findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs, the tribes and bands of the Tillamooks, the Coquille, the Too-too-to-ney, and the Chetco, are entitled to recover. Judgment as to the amount of recovery and the amount of offsets, if any, is reserved for further proceedings under Rule 39 (a).

The court further concludes as a matter of law that plaintiffs Umpqua Tribe, Chinook Tribe, Clatsop Tribe, Ne-ha-lum Tribe, Confederated Tribes of the Grand Ronde Community, Oregon, Willamette Valley Confederated Tribe, and the Siletz Confederated Tribe are not entitled to recover, and the petition is dismissed as to these tribes.

101 *Proceedings after entry of judgment*

On May 28, 1945, the defendant filed a motion for a new trial.

On June 4, 1945, the court entered the following order on said motion:

ORDER

It is ordered this 4th day of June, 1945, that the defendant's motion for new trial be and the same is hereby overruled.

U. S. GOVERNMENT PRINTING OFFICE: 1945

Supreme Court of the United States

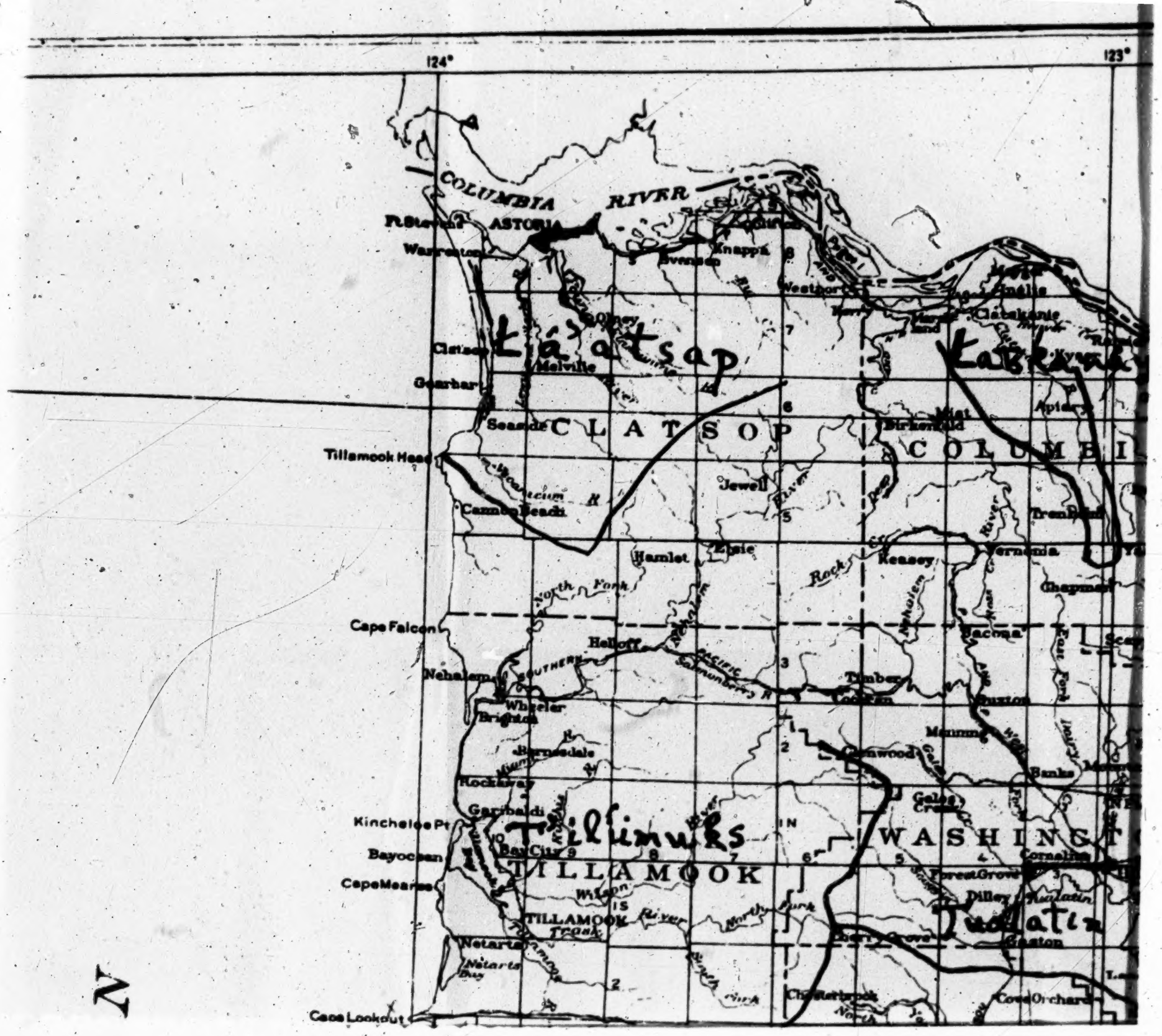
Order allowing certiorari

Filed October 22, 1945

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

672600—45 U. S. GOVERNMENT PRINTING OFFICE: 1945


124°
123°
COLUMBIA RIVER
Ft. Stevens
ASTORIA
Warrenton
Knappa
Svensen
Westport
Clatskanie
Olney
Clatsop
Klaatsop
Clatsop
Melville
Gearhart
Seaside
CLATSOP
COLUMBIA
Tillamook Head
Jewell
Cannon Beach
Hamlet
Elsie
Keasey
Vernonia
Cape Falcon
Helloff
Nehalem
Timber
Wheeler
Brighton
Barnesdale
Rockaway
Garibaldi
Kinchelloe Pt
Tillimuks
Bay City
Bayocean
TILLAMOOK
Cape Meares
Wilson
TILLAMOOK
Trask
River
Netarts
Netarts Bay
Cape Lookout
Manning
Glenwood
Banks
Gales Creek
WASHINGTON
Forest Grove
Cornelius
Dilley
Tualatin
Gaston
Cove Orchard
Chesterbrook
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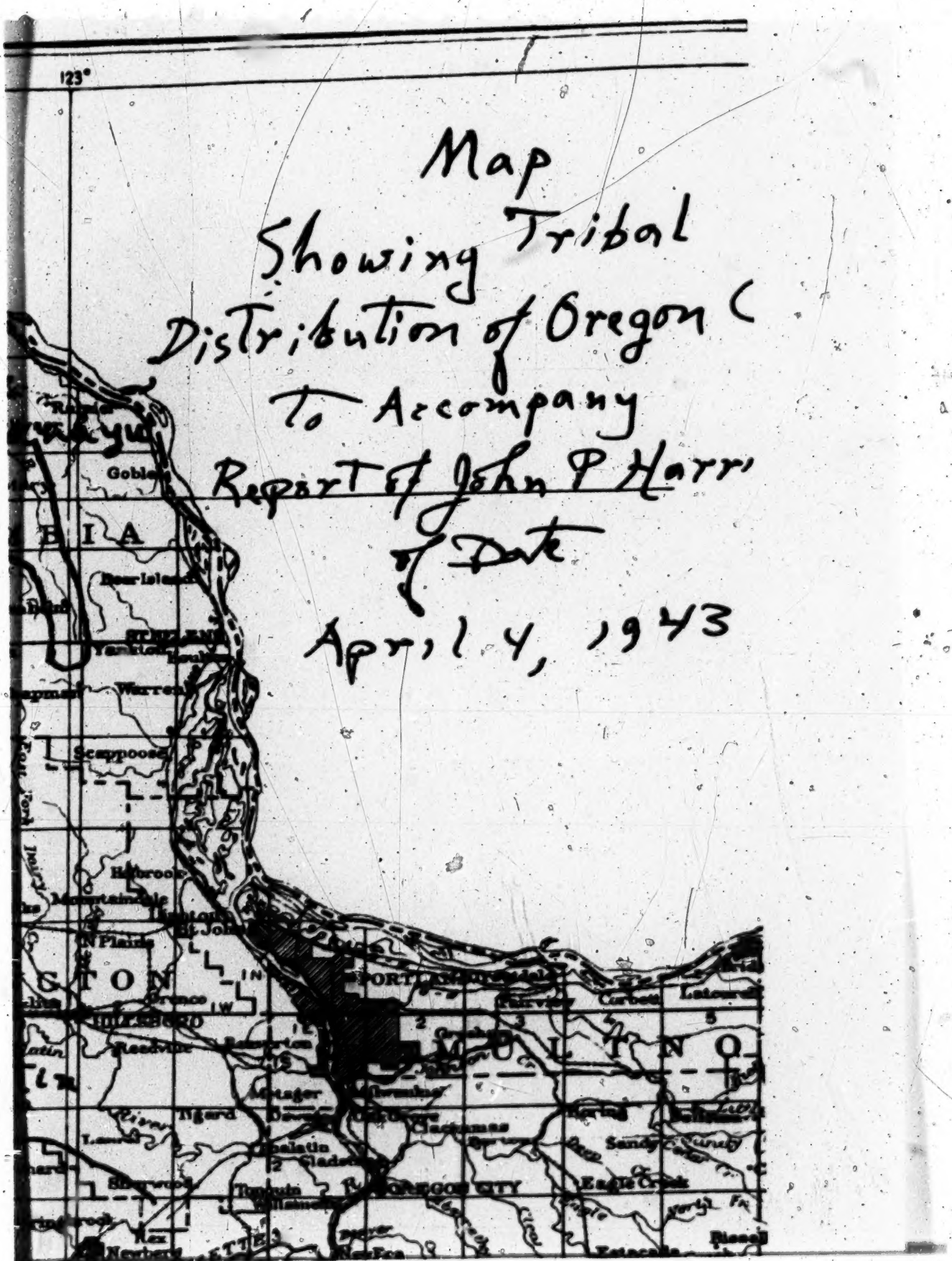
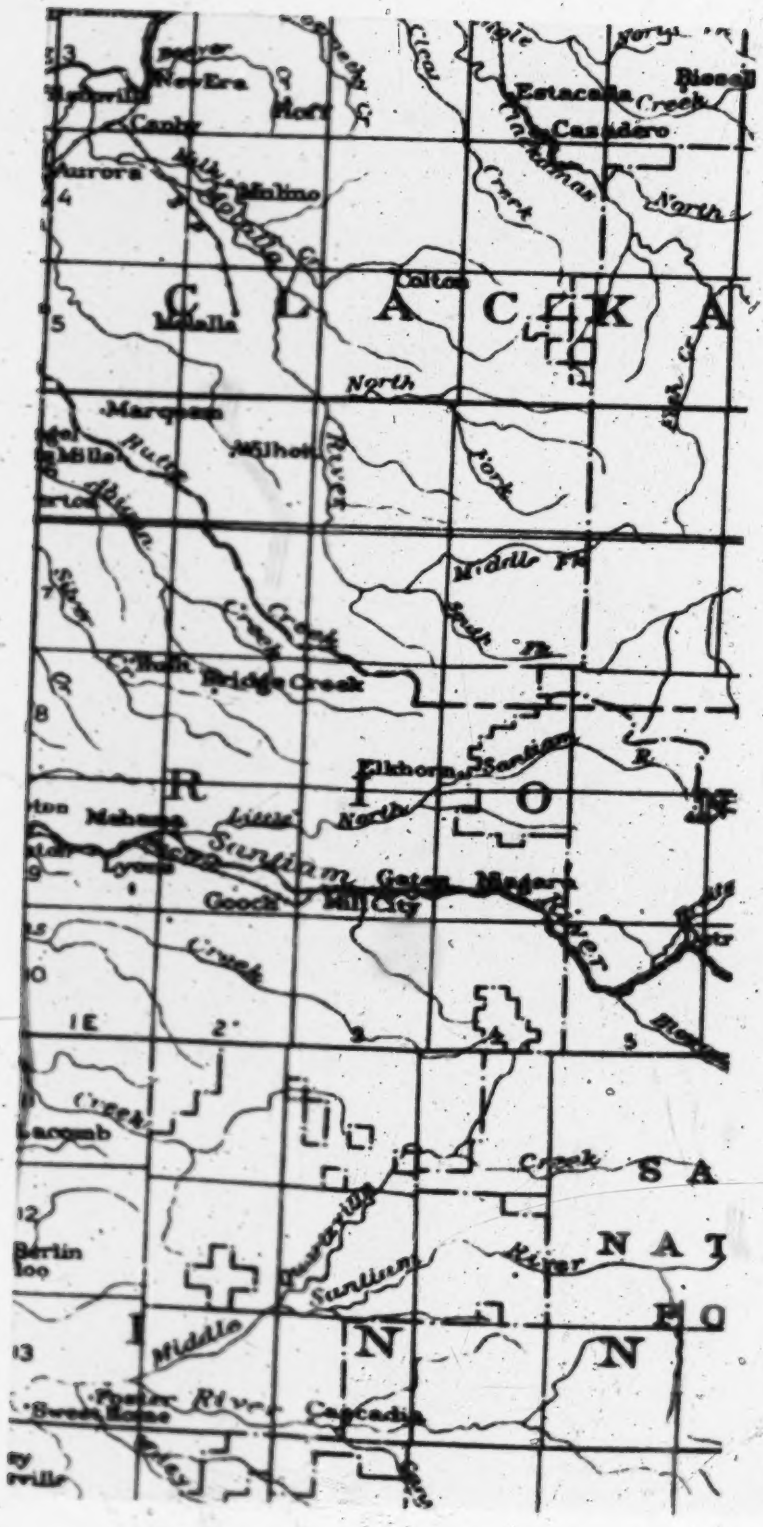


Map
Showing Tribal
Distribution of Oregon C
to Accompany
Report of John P Harr
of Date
April 4, 1943

C O C E A N
Cape Foulweather
Yaquina Head
Cascade Head
Cape Lookout
Newport
Yaquina
Toledo
Waldport
Neskowin
Oceanlake
Woods
Cloverdale
Pacific City
Beaver
Tillamook
Hebo
Siuslaw
National
Forest
Siletz Bay
Siletz River
Yamhill River
Yamhill
McMinnville
Amity
Sheridan
Dayton
Lafayette
Dundee
Carlton
Newberg
Willamina
Grand Ronde
Valsetz
Falls City
Black Rock
Mountain
Dallas
Rickreall
Salem
Independence
Monmouth
Buell
Ballston
Perrydale
McCoy
Whiteson
Wheatland
Sidney
Bellevue
Wallace
Ellendale
Gooseberry
Wascoda
Brooks
Gervais
Aurora
Butteville
Donald
Hubbard
Woodburn
Mt. Angel
Scotts Mills
Silverton
Scio
Jefferson
Albany
Millersburg
Shedd
Tangent
Halsey
Harrisburg
Brownsville
Sodaville
Lebanon
Crabtree
Lacomb
Sweet Home
Foster
Waterloo
Berlin
Detroit
Gates
Idanha
Mill City
Gates
Santiam
Santiam River
Linn
Benton
Marion
Polk
Yamhill
Clackamas
Multnomah
Clackamas River
Willamette River
Willamette
Oregon
Portland
Gladstone
Oregon City
Milwaukie
Sherwood
Newberg
Dayton
Dundee
Carlton
Amity
Sheridan
Willamina
Grand Ronde


Estacada
Creek
Clear
Eagle
Creek
Aurora
Milo
North
Fork
Marquam
Elkhorn
Sandy
R.
Little
Sandy
River
Bridge
Creek
Middle
Fork
South
Fork
Deep
Creek
Gresham
Mount
Hood
Cascadia
Berlin
Middle
Fork
River
Sandy
River
Creek
Lacamb
Creek
Sandy
River
Boring
Station
Cedar
Mills
Helvetia
Orenco
Aloha
Beaverton
Hillsboro
Cornelius
Forest
Grove
Gaston
Banks
Buxton
Timber
Vernonia
Scappoose
Columbia
City
St.
Helens
Rainier
Clatskanie
Astoria
Warrenton
Seaside
Cannon
Beach
Tillamook
Bay
City
Garibaldi
Rockaway
Nehalem
Manzanita
Wheeler
Nehalem
Bay
Netarts
Bay
Oceanside
Pacific
City
Neskowin
Lincoln
City
Depoe
Bay
Newport
Yaquina
Bay
Waldport
Yachats
Florence
Reedsport
Winchester
Bay
Coos
Bay
North
Bend
Coquille
Bandon
Port
Orford
Gold
Beach
Brookings
Harbor
Crescent
City
Smith
River
Gasquet
Hiouchi
Fort
Dick
Arcata
Eureka
Fortuna
Ferndale
Rio
Dell
Scotia
Garberville
Redway
Miranda
Weott
Myers
Flat
Shelter
Cove
Whitethorn
Briceland
Honeydew
Petrolia
Cape
Mendocino
Capetown
Bear
River
Indianola
Blue
Lake
Korbel
Orick
Trinidad
Big
Lagoon
Willow
Creek
Hoopa
Valley
Indian
Reservation
Weitchpec
Orleans
Somes
Bar
Ruth
Forks
Peak
Bald
Mountain
Mount
Ashland
Grants
Pass
Medford
Jacksonville
Central
Point
Eagle
Point
Shady
Cove
Butte
Falls
Prospect
Trail
Gold
Hill
Rogue
River
Agness
Illahe
Powers
Myrtle
Point
Bandon
Langlois
Sixes
Port
Orford
Gold
Beach
Brookings
Harbor
Crescent
City
Smith
River
Gasquet
Hiouchi
Fort
Dick
Arcata
Eureka
Fortuna
Ferndale
Rio
Dell
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Garberville
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Miranda
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Shelter
Cove
Whitethorn
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Honeydew
Petrolia
Cape
Mendocino
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Shady
Cove
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Falls
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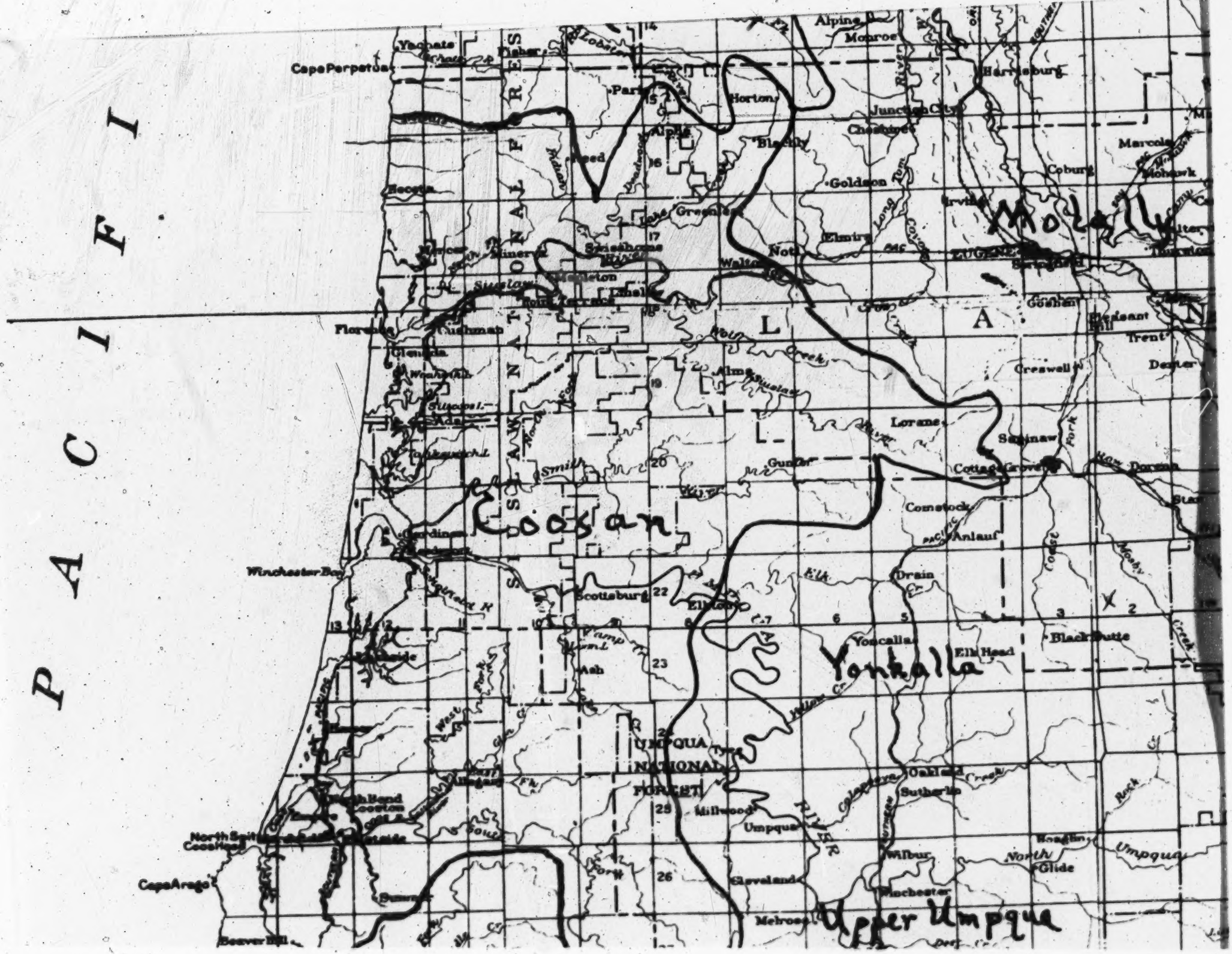
River
Agness
Illahe
Powers
Myrtle
Point
Bandon
Langlois
Sixes


PACIFIC
Coosan
Yonkalla
Upper Umpqua
Molalla
Cape Perpetua
Florence
Winchester Bay
Scottsburg
Elkton
Yoncalla
Drain
Oakland
Sutherlin
Roseburg
Umpqua
Cape Arago
Coos Head
Beaver Hill
Gardiner
Reedsport
Elmira
Veneta
Alpine
Monroe
Harrisburg
Junction City
Coburg
Marcola
Goldson
Elmira
Creswell
Lorane
Cottage Grove
Comstock
Anlauf
Blachly
Horton
Alpha
Greenleaf
Noti
Walton
Siuslaw
Siuslaw River
Umpqua River
Smith River
Coast Fork
Middle Fork
Long Tom
Mohawk
Calapooya
Rock Creek
Elk
Yellow Creek
Deer Creek
Lobster Creek
Parker Creek
Ash
Millwood
Wilbur
Elkhead
Blackbutte
Trent
Dexter
Goshen
Pleasant Hill
Saginaw
Dorena
Star
Indianola
Reedsport
Gardiner
Winchester Bay
Scottsburg
Elkton
Yoncalla
Drain
Oakland
Sutherlin
Roseburg
Umpqua
Cape Arago
Coos Head
Beaver Hill
Florence
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Alpine
Monroe
Harrisburg
Junction City
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Cottage Grove
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Anlauf
Blachly
Horton
Alpha
Greenleaf
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Walton
Siuslaw
Siuslaw River
Umpqua River
Smith River
Coast Fork
Middle Fork
Long Tom
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Calapooya
Rock Creek
Elk
Yellow Creek
Deer Creek
Lobster Creek
Parker Creek
Ash
Millwood
Wilbur
Elkhead
Blackbutte
Trent
Dexter
Goshen
Pleasant Hill
Saginaw
Dorena
Star
Indianola
UMPQUA NATIONAL FOREST
COAST RANGE
COAST RANGE
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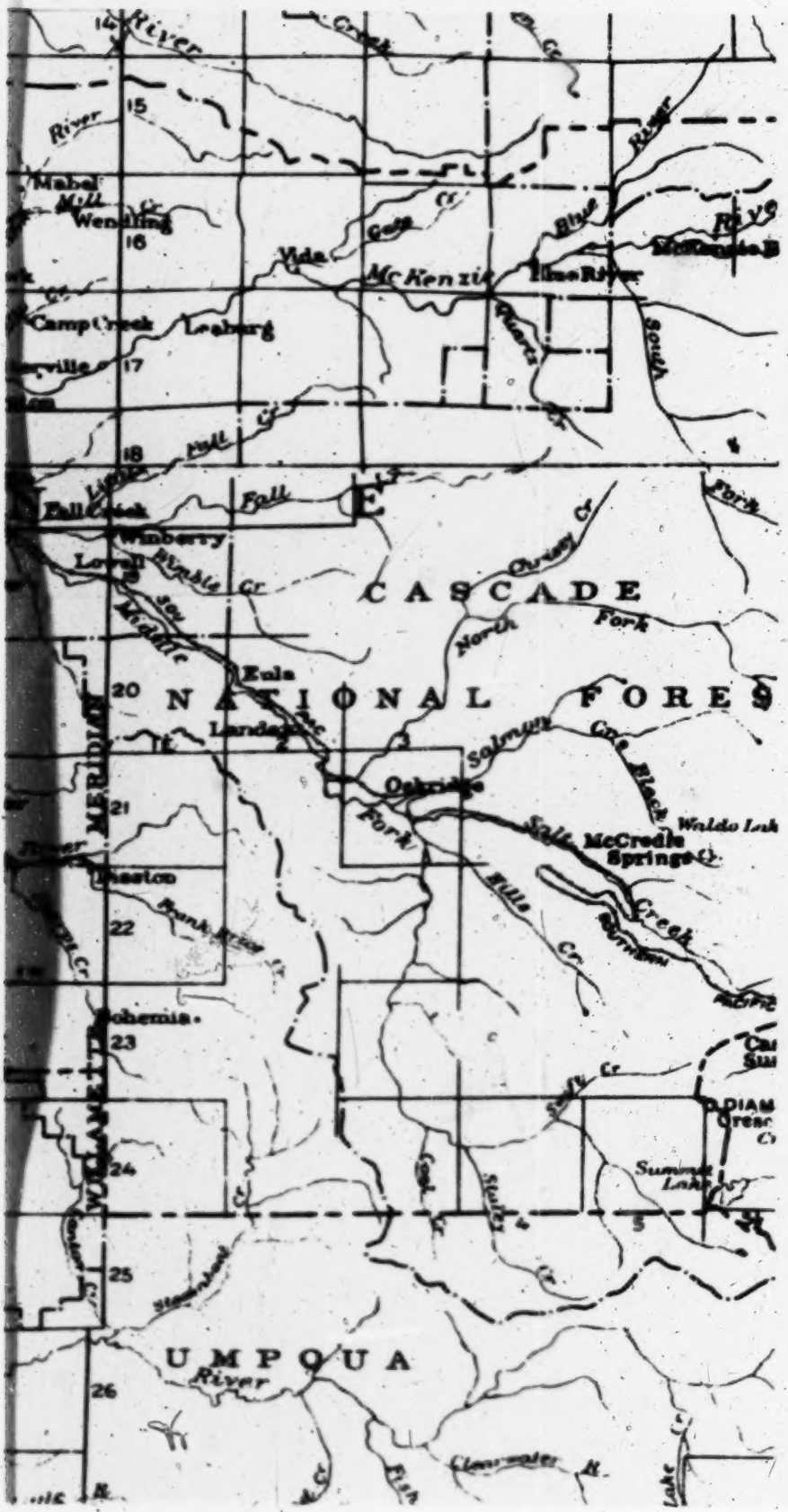
3
2


CASCADE
NATIONAL FORES
UMPQUA
River
Creek
Mabel
Mill
Wendling
Vida
McKenzie
Blue
Camp Creek
Leaburg
Fall Creek
Fall
Winberry
Lowell
Ripple Cr
Middle
Fork
Eula
Landes
Oakridge
Salmon
Cox
Black
Waldo Lak
McCredie Springs
Hills
Creek
Bohemia
Frank
Summit Lake
Stuart
Cook
Steamboat
Elk
Clearwater
Lake
MERIDIAN
WILLAMETTE
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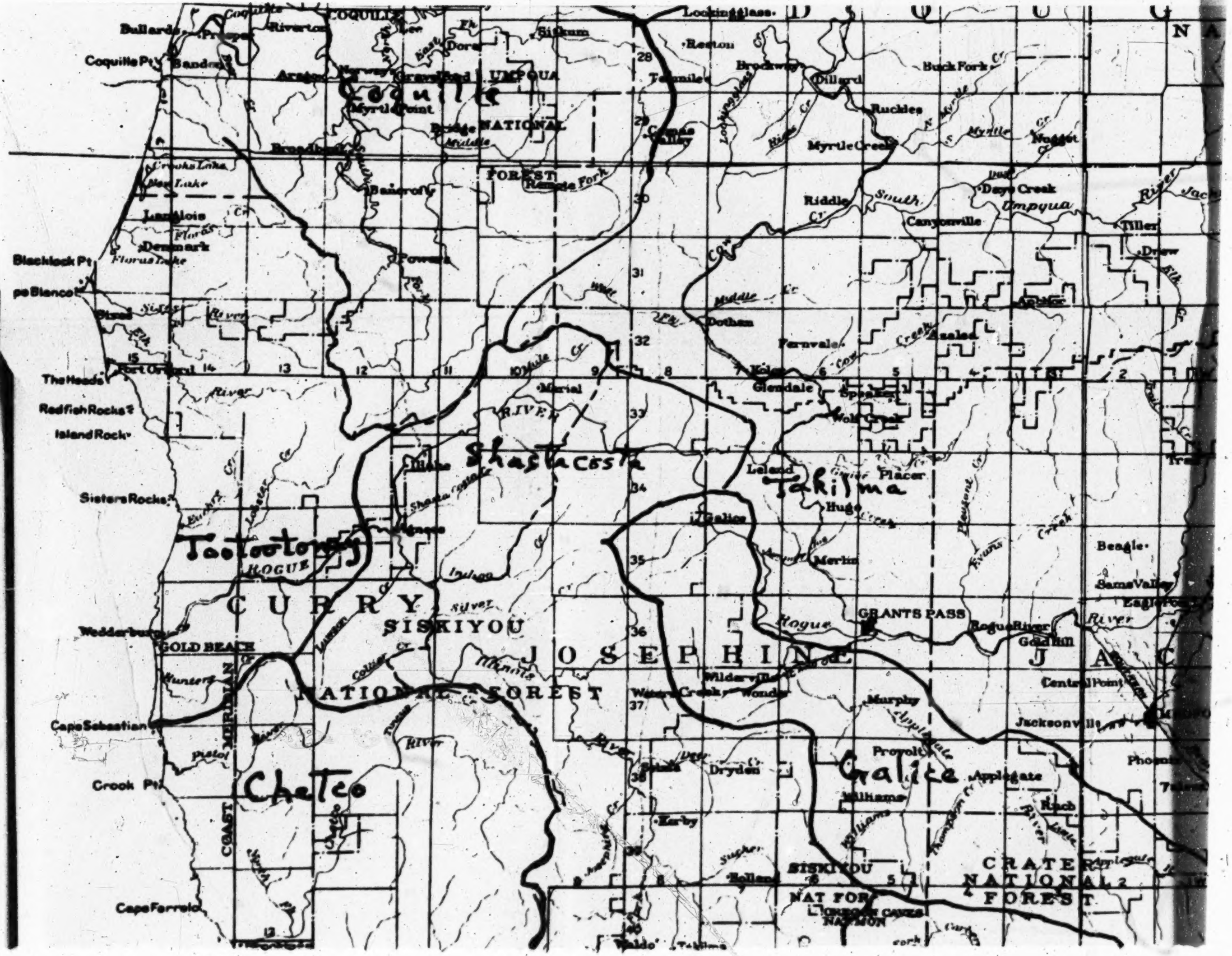
COQUILLE
Coquille
Bullards
Riverton
Sixes
Coquille Pt
Bandon
Arago
Norway
Grave Point
UMPQUA
Myrtle Point
Bridge
NATIONAL
Middle
Broadbent
Crooks Lake
Bear Lake
Baisendorf
FOREST
Remote Fork
Lamblois
Denmark
Floras Lake
Blacklock Pt
pe Blanco
Powers
Floras
Creek
Elk
River
The Heads
Redfish Rocks
Island Rock
Port Orford
Sisters Rocks
Tototonga
ROGUE
CURRY
SISKIYOU
Wedderburn
GOLD BEACH
Hunters
Cape Sebastian
Pistol
Crook Pt
Chetco
COAST
MERIDIAN
Cape Ferrelo
Lobster
Euchre
Illinois
Rogue
Silver
Collier
Pacific
Ophir
Sisikum
Reston
Brockway
Tennile
Lookingglass
Dillard
Buck Fork
Ruckles
Myrtle Creek
Nugget
Days Creek
Riddle
South
Umpqua
Canyonville
Tiller
Drew
Dothan
Fernvale
Kelsey
Glendale
Speaker
Wolf Creek
Azalea
Merial
RIVER
Shastacosta
Illahe
Leland
Takilma
Placer
Hugo
Galice
Merlin
Beagle
Sams Valley
Eagle Creek
GRANTS PASS
Rogue River
Goldhill
Central Point
Jacksonville
Wilderville
Wonder
Murphy
Applegate
Provolt
Dryden
Kerby
Williams
Rollard
Waldo
SISKIYOU
NAT FOR
CRATER
NATIONAL
FOREST
Indigo
Thomas
Creek
Rich
Little
Sugar
Williams
Applegate
Illinois
Deer
Lobster
Euchre
Pistol
Hunters
Collier
Pacific
Ophir
Silver
Indigo
Rogue
Illinois
Deer
Thomas
Creek
Sugar
Williams
Applegate
Little
Rich
Elk
Middle
Fork
Coos
Bay
Wagner
Creek
Days
Creek
Jacksonville
Central Point
Grants Pass
Rogue River
Goldhill
Sams Valley
Eagle Creek
Beagle
Merlin
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Leland
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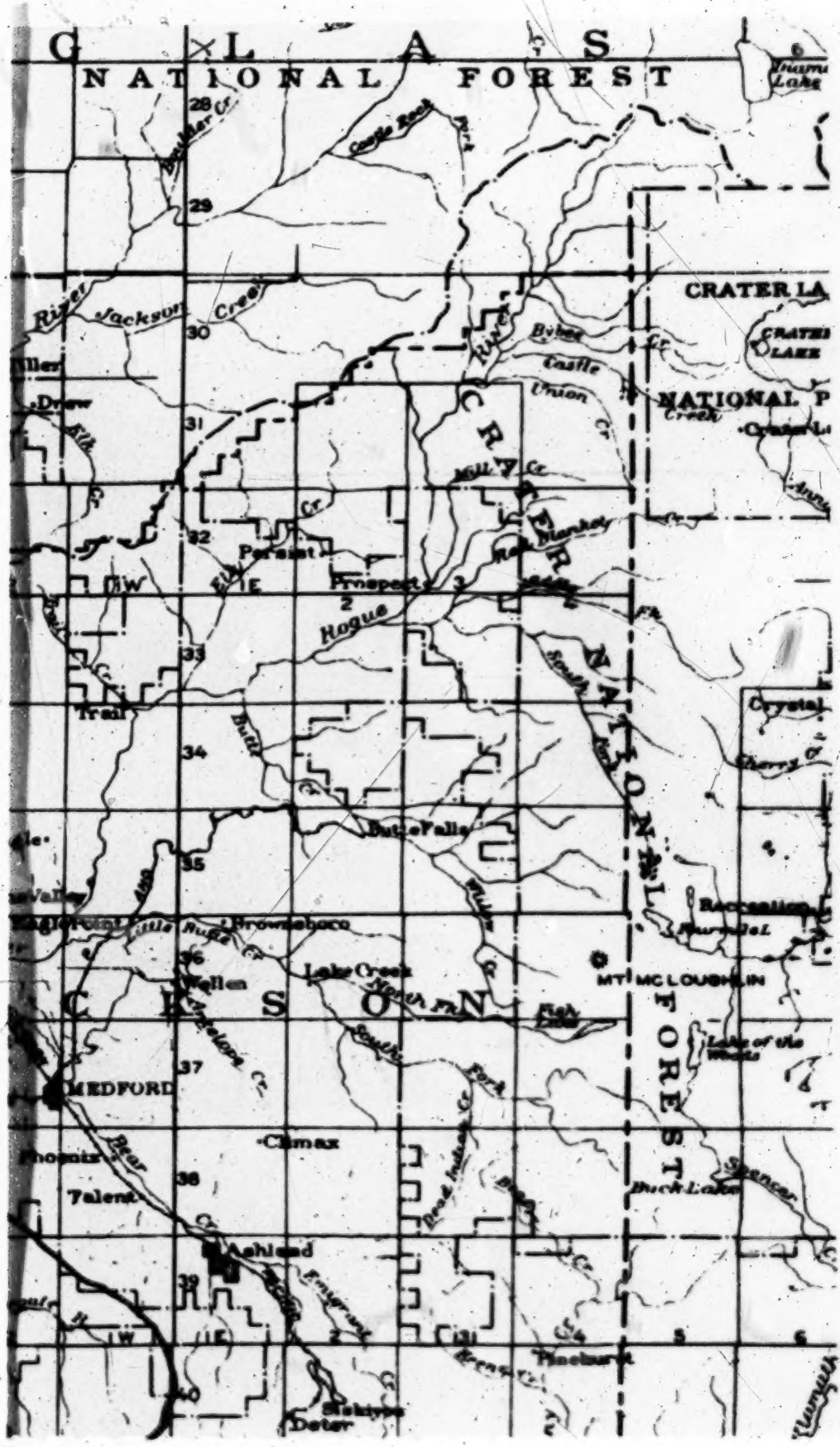
CLASS
NATIONAL FOREST
CRATER LA
NATIONAL P
Crater Lake
Diamond Lake
Rogue River
Jackson Creek
Castle Rock Cr.
Boulder Cr.
Drew
Elk Cr.
Trail
Trail Cr.
Persist
Prospect
Hogue
Butte Falls
Little Butte Cr.
Brownsboro
Eagle Point
Valley
Wellen
Lake Creek
Agate Lake
Fish Lake
Lake of the Woods
MT. MCLOUGHLIN
FOREST
MEDFORD
Climax
Phoenix
Talent
Bear Cr.
Ashland
Emigrant Cr.
Pinehurst
Siskiyou
Deter
Crystal
Cherry Cr.
Rancheria
Round Lk.
Buck Lake
Spencer
Deadhorse Cr.
Big Butte Cr.
Union Cr.
Castle Cr.
Bybee Cr.
Mill Cr.
Elk Cr.
Blanchey
Creek
Annie
Cr.
Rogue River
South Fk.
North Fk.
Lake Creek
Agate Lake
Fish Lake
Deadhorse Cr.
Big Butte Cr.
Emigrant Cr.
Bear Cr.
Applegate Cr.
Little Butte Cr.
Rogue River
Butte Cr.
Trail Cr.
Elk Cr.
Drew
Boulder Cr.
Castle Rock Cr.
Jackson Creek
Rogue River
Bybee Cr.
Union Cr.
Mill Cr.
Blanchey
Creek
Annie
Cr.
Persist
Prospect
Hogue
Trail
Trail Cr.